TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 106.

JAMES W. DONNELL, PETITIONER,

vs.

HERRING-HALL-MARVIN SAFE COMPANY AND HALL SAFE AND LOCK COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1908.
CERTIORARI AND RETURN FILED NOVEMBER 9, 1908.

(20,374.)

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a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1904.

No. 1192.

HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Appellants,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Appellee.

Mr. George P. Merrick, Mr. Azel F. Hatch, Counsel for Appellants.
Mr. Charles H. Aldrich, Mr. Harry S. McAuley, Counsel for Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Transcript of record filed July 8, 1905.
Printed record filed Aug. 17, 1905.
EDWARD M. HOLLOWAY, *Clerk.*

1 *Placita.*

Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Solomon H. Bethea, District Judge of the United States for the Northern District of Illinois, on Thursday, the first day of June, in the year of our Lord one thousand nine hundred and five, being one of the days of the regular December term of said Court, 1904, and of our Independence the one hundred and twenty-ninth year.

MARSHALL E. SAMPSELL, *Clerk.*

2 *Cook County Court Record.*

Filed July 12, 1904.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Bill. 27294.

HALL SAFE AND LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE COMPANY.

Cross-Bill.

HERRING-HALL-MARVIN SAFE COMPANY
vs.
HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL.

Be it remembered that on this day to-wit: the twelfth day of July, 1904, came the Herring-Hall-Marvin Safe Company by its solicitors,

Mr. Charles H. Aldrich and Mr. Lawrence Maxwell, Jr., and filed in the clerk's office of said Court in the above entitled cause a certain Transcript of Record from the Superior Court of Cook County, State of Illinois, which said Transcript of Record (omitting certain Notices) is in the words and figures following to-wit:

Record from Superior Court of Cook County.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Placita.

Pleas, before the Honorable Theodore Brentano, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the sixth day of June, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States of America, the one hundred and twenty-eighth.

Present: The Honorable Theodore Brentano, Judge of the Superior Court of Cook County. Charles S. Deneen, State's Attorney. Thomas E. Barrett, Sheriff of Cook County.

Attest:
JOHN A. LINN, *Clerk.*

3 Be it remembered that heretofore, to-wit: on June 28th in the year of our Lord, one thousand nine hundred and four there issued out of the office of the clerk of the Superior Court of Cook County the People's Writ of Summons, directed to the Sheriff of Cook County to execute, which said writ with the sheriff's return thereon endorsed is in the words and figures as follows to-wit:

Chancery Summons.

Issued June 28, 1904.

Chancery Summons.

Superior Court of Cook County.

STATE OF ILLINOIS, *County of Cook, ss:*

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that you summon Herring-Hall-Marvin Safe Co. if it shall be found in your county, personally to be and appear before the Superior Court of Cook County, on the first day of the term thereof to be held at the Court House, in Chicago, in said Cook

County, on the first Monday of August next to answer unto The Hall Safe and Lock Company, a corporation in its certain bill of complaint filed in said Court, on the chancery side thereof.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness, John A. Linn, Clerk of our said Court and the seal thereof, at Chicago aforesaid, this 28th day of June A. D. 1904.

[SEAL.] JOHN A. LINN, *Clerk.*

P'd 1 00

Served this writ on the within named Herring-Hall-Marvin Safe Co., a corporation by delivering a copy thereof to H. S. Miller agent of said corporation this 1st day of July, 1904.

The president of said corporation not found in my county.

THOMAS E. BARRETT, *Sheriff,*
By CHAS. R. STROOK, *Deputy.*

4 And on to-wit: *on* the 28th day of June, A. D. 1904, a certain bill was filed in the office of the clerk of said Court in words and figures following to-wit:

Bill of Complaint.

Filed June 28, 1904.

STATE OF ILLINOIS, *County of Cook, ss:*

In the Superior Court of Cook County.

To the Honorable the Judges of the Superior Court of Cook County, Illinois, in Chancery Sitting:

Your orator, The Hall Safe and Lock Company, a corporation of the State of Illinois, complains of the Herring-Hall-Marvin Safe Company, a corporation of the State of New Jersey, and thereupon your orator represents unto your Honors as follows:

First. That your orator is a duly organized and existing corporation of the State of Illinois by virtue of a charter granted to it May 7th, 1898, as by the said charter duly filed for record in the Recorder's office of Cook County, Illinois, on May 9th, 1898, in Book 86 of Corporation Records at page 80, ready to be produced in court, will more fully and at large appear.

Second. Your orator represents that the object of your orator as expressed in its petition to incorporate, is "to buy, sell and manufacture, repair and deal in, on commission, consignment or otherwise, safes, vaults and deposit vaults, and to engage in the safe, deposit vault and kindred business."

Third. Your orator represents that it is and has been since its incorporation, located at Number 53 and 54 Wabash Avenue, in the City of Chicago, Illinois, and has been since its incorporation and is

now engaged in the business of manufacturing, selling and dealing in safes, safe vaults and deposit vaults and is a going concern and has been and is actively engaged in the business for which it was organized and has been and is now doing a large and profitable business; that it has since its incorporation advertised itself by signs upon the building occupied by it, and by newspapers, circulars and other legitimate methods of advertising, as dealers in Hall's safes, being safes manufactured by The Hall's Safe Company of Cincinnati, Ohio, a corporation of the State of Ohio and that said
5 safes so manufactured are a well known product and are well and favorably known to and in the trade and by the public as articles of merchandise of intrinsic value and suitable for the purposes for which they are made, and that said safes so manufactured and dealt in by your orator as aforesaid, also enjoy a very high reputation by reason of the name of the manufacturer thereof; that said safes are recognized throughout the business world, and particularly by bankers, merchants and the commercial public, by reason of the name "Hall" and "The Hall's Safe Company" being conspicuously placed on said safes as an evidence or token of the manufacture thereof.

Fourth. Your orator further represents that it has since its organization and has now the exclusive right to maintain an office and store room in the said City of Chicago for the sale of said Hall's safes, safe vaults and deposit vaults manufactured by the said The Hall's Safe Company of Cincinnati, Ohio, and that such exclusive right as aforesaid, is of great advantage to and source of great profit to your orator.

Fifth. Your orator further represents that it is engaged in the manufacture of safe vaults and deposit vaults, as well as in the sale of safes, safe vaults and deposit vaults made by said The Hall's Safe Company as aforesaid, and that such portion of its business is of great advantage and a source of great profit to your orator.

Sixth. Your orator further represents that by reason of its name, trade mark, trade name, signs, advertisements and reputation as a dealer in safes so manufactured as aforesaid, and of safe vaults and deposit vaults so manufactured as aforesaid, it has acquired and enjoys a high reputation as a dealer in first class safes and safe material, deposit vaults and the like, not otherwise enjoyed by dealers who have not the agency of said safes and who do not rightfully sell or deal in safes enjoying the reputation of safes manufactured by The Hall's Safe Company; and that your orator also enjoys a high reputation as manufacturer of safe vaults and deposit vaults by reason of long experience in the business and by the skill acquired by long experience in the construction of deposit vaults, safe vaults and other products of kindred character.

Seventh. Your orator further represents that Hall's safes were first manufactured by Joseph L. Hall at or near Cincinnati,
6 Ohio, on or about the year 1854, and that since said time the said Joseph L. Hall, or his sons, either individually or as managers of corporations in which the personal or family name of "Hall" appeared, have been engaged in the manufacture of safes and the

name "Hall" has by reason of such long business experience, acquired and now enjoys the highest reputation in the safe business; that safes so manufactured and labeled are known to the trade and to the public as safes of the highest type of construction, durability, efficiency and character, for the purposes for which safes are manufactured, to-wit, the preservation from fire and theft of money and personal property of great value.

Eighth. That the Hall's Safe Company, an Ohio corporation was organized by virtue of a charter of the State of Ohio on September 15, 1896, and is now and has been continuously since said date, engaged in the manufacture of safes described as and known to the public as Hall's safe manufactured by The Hall's Safe Company.

Ninth. That said Herring-Hall-Marvin Safe Company, the defendant herein, is a corporation of the State of New Jersey, and became organized as such by virtue of a charter of said State in the year 1901.

Tenth. That since the incorporation of your orator it has been continuously engaged in and has advertised itself as engaged in the business of dealing in and selling the said The Hall's Safe Company's safes, safe vaults and deposit vaults, and has been engaged in and has advertised itself as manufacturers and dealers in Hall Safe & Lock Company's safe vaults and deposit vaults, and that your orator has been since its incorporation, engaged in such business as aforesaid at said Number 52 and 54 Wabash avenue in said City of Chicago, Illinois, and that by reason of such continued business and permanent location and by advertising itself as such dealer in said Hall's safes and safe material of its own manufacture, it has acquired a reputation well and firmly established in the trade and with the public and such reputation and good will is of the highest value and importance to your orator and that by reason of its exclusive agency of the sale of said Hall's safes so made as aforesaid, and by reason of its long experience in the safe business, it has established for itself and for said safes so sold by it, a reputation for fair dealing in such
7 products of very great value and from which your orator derives large profits in the prosecution of its said business.

Eleventh. That on or about the tenth day of June, 1904, said defendant, Herring-Hall-Marvin Safe Co., through its agents and representatives, secured the use of and now occupy a certain store-room in the building at the southwest corner of Lake Street and Dearborn Street in the said City of Chicago, and for the purpose of advertising its business wrongfully caused to be placed immediately above the windows and doors of said building on the Dearborn Street side and also upon the Lake Street side, two certain signs reading as follows, to-wit:

"Hall Safe & Lock Co.
Herring-Hall-Marvin Safe Co.,
successors;"

that the said signboards are each about thirty-five to forty feet long by three feet high approximately; that the letters forming the name "Hall Safe & Lock Co." placed on said sign are raised gilt upon a black background extending practically the entire length of said signs

and said letters are about twelve inches in height; that the letters forming the name "Herring-Hall-Marvin Safe Co." are also of raised gilt and of about the same dimensions as the letters of the name "Hall Safe & Lock Co."; that the word "successors" is inconspicuously placed upon said sign boards at the bottom of said raised gilt letters and in small letters not more than two inches in height, not raised but merely painted in gilt; that said signs above mentioned run nearly the entire length of said store room, both on said Dearborn Street and on said Lake Street; that immediately above the door at the corner of said building appears a sign as follows:

"Hall's
Standard
Safes,"

the said latter sign being composed of letters of even greater dimensions than the large letters composing the said signs,

"Hall Safe & Lock Co.
Herring-Hall-Marvin Safe Co.
successors,"

aforesaid.

Twelfth. Your orator further represents that the said use of your orator's corporate name on said signs by said defendant and
8 the representation that it said defendant is the successor of your orator was and is without permission of your orator and was and is unauthorized and was and is an unfair, improper and illegal use of your orator's corporate trade name and trade mark and constitutes unfair competition in trade and tends to and is calculated and does confuse and deceive the public into believing that the said place of business at said Dearborn Street and Lake Street is the place of business of your orator, or that your orator has ceased doing business and is succeeded by said defendant, and your orator further charges that the publication on said signs that said defendant is the successor of your orator is wholly false.

Thirteenth. That on the 23rd day of June, 1904, your orator caused to be served upon said defendant, Herring-Hall-Marvin Safe Co. the following notice:

"To Herring-Hall-Marvin Safe Co., Lake and Dearborn Streets, Chicago, Illinois:

This is to notify you that the use of our trade mark or trade name in signs above the doors and windows of the first floor of the building occupied by you at the southwest corner of Lake Street and Dearborn Street, Chicago, Illinois, is without permission of the undersigned, is unauthorized, is unwarranted and is unjust and is an infringement of our trade mark and trade name, and is a continuing breach of fair competition in trade. You will, therefore, remove said signs at once and cease to further represent by such signs or otherwise that you are the Hall Safe & Lock Company, or its successor, or in anywise connected with the undersigned. The neglect or refusal of your Company, its agents and representatives, to observe this Notice and remove the signs mentioned herein will be the

occasion of our seeking such legal recourse as may be necessary in the premises.

You are further notified that the undersigned is a legally organized and existing corporation of the State of Illinois and has been such since May 9, 1898, and has since such time and has now the exclusive right to the use of such name and good will and patronage thereto attached.

THE HALL SAFE & LOCK COMPANY,
By JAMES W. DONNELL,
Its President."

Chicago, Illinois, June 23, 1904."

That said notice was duly served upon defendant by leav-
9 ing a copy of the same with Howard S. Miller, the Chicago agent and manager of said foreign corporation, said Herring-Hall-Marvin Safe Co., defendant.

Fourteenth. Your orator further represents that since the service of said notice upon said defendant, the said defendant has wholly neglected, failed and refused to remove the said signs in compliance with said notice, and that said signs are still remaining on said building, to the great wrong, injury and damage of your orator as hereinbefore and hereinafter stated.

Fifteenth. Your orator further represents and charges the fact to be that in pursuance of said unlawful design and purpose as aforesaid, the said defendant is seeking to advertise itself not only by said signs but by publications, to-wit, by publishing in the Lakeside City Directory, the well-known city directory of the City of Chicago, that it, said Herring-Hall-Marvin Safe Co., is the successor of your orator, and that said defendant has done so by means of submitting to said Chicago Directory Company, publisher of said Lakeside City Directory, for publication in said directory for the year 1904, the following reference to itself, viz.:

"Hall Safe & Lock Co.
See Herring-Hall-Marvin Safe Co.
32-34 Dearborn."

And has sought to have displayed as advertising matter in the classified portion of said directory so to be published for the year 1904, the following words among others:

"Hall Safe & Lock Co.
Herring-Hall-Marvin Safe & Lock Co.,
successors,"

and that said publisher of said directory have agreed to accept such advertisement and publish the same over the protest of your orator duly given in writing unless directed not so to do by judicial order and have advised your orator that it, said publisher cannot refuse to accept said advertisement so tendered by said defendant, except upon the direction of court.

Sixteenth. Your orator further represents that said defendant by the placing of said signs on its said place of business and by seeking to advertise as aforesaid, that it is the successor of your orator, is

attempting to deprive your orator of its custom and good will rightfully belonging to it and heretofore enjoyed by it and particularly at its place of business in the city of Chicago as aforesaid, and throughout the territory contiguous to Chicago.

Seventeenth. And your orator charges that the placing of said signs and the unwarranted unauthorized use of its corporate name at the place of business of defendant was and is well calculated to deceive the public into believing that the defendant is the successor of your orator and that your orator has gone out of business and that said defendant is the authorized successor and dealer in the safes manufactured by The Hall's Safe Company and safes having the characteristics of safes manufactured by The Hall's Safe Company and all safes known to the trade distinctively as "Hall's" and that the said defendant by its attempted advertisement as aforesaid in said directory is attempting to do the same with malicious design to confuse and deceive the public by inducing the public to believe that your orator has sold out its said business to said defendant and is the rightful dealer in the product dealt in exclusively by your orator and in which product your orator has the exclusive agency in the city of Chicago, and the territory tributary and contiguous thereto, to the great and irreparable injury of your orator in the premises.

Eighteenth. Your orator further represents that the placing of such signs and the proposed advertisements as aforesaid, was and is not only calculated to deceive, but was intended by said defendant to deceive the public, and particularly prospective buyers of safes and safe materials, into believing that the said defendant is the duly authorized agent and dealer in safes manufactured by The Hall's Safe Company, and safes having the characteristics of safes manufactured by the Halls, whose reputation as safe dealers carry with it on all safes manufactured by them, the business understanding that such safes are of the type and quality of safes manufactured by the original inventor of such safes and his successors in such business, to the great injury and irreparable damage of your orator in the premises.

Nineteenth. And your orator further represents that such placing of said signs and such advertisements as aforesaid, is and was calculated to deceive the public and prospective customers of your orator, into believing that your orator had ceased manufacturing and dealing in safe vaults and safe materials and has been succeeded by defendant and that your orator is no longer engaged in the manufacture of safe vaults and deposit vaults and a dealer in products of
11 kindred character, to the irreparable injury and damage of your orator in the premises.

Twentieth. Your orator further represents that said defendant has not in its place of business any safe or safes, or safe materials manufactured by The Hall's Safe Company, an Ohio corporation, or any safe vaults or deposit vaults or safe material manufactured by your orator, but on the contrary thereof, all of defendant's safes so in stock in said store room, are safes and safe materials of another and different manufacture and labeled as such, and your orator charges the fact to be, that it is the intent of said defendant merely to injure and damage your orator by seeking to secure customers to come into

defendant's place of business and to offer to said customers safes and safe materials, deposit vaults and the like of another manufacture than that of The Hall's Safe Company, or your orator's manufacture, in lieu of and in place of said The Hall's Safe Company's safes and your orators safe vaults and deposit vaults, and to foist upon intending purchasers of safes and vaults, a safe different and unlike safes and safe material dealt in by your orator and manufactured by The Hall's Safe Company and your orator, with the intent to deprive your orator of the business that would otherwise by reason of its long established business and reputation, come to your orator in the usual and ordinary course of business.

Twenty-first. Your orator further represents that the president of your orator has been engaged in the safe business in the city of Chicago for more than twenty years last past and during all of said time has continuously sold safes and safe materials manufactured by the Hall's Safe & Lock Co., the dissolved Ohio corporation, and safes manufactured by The Hall's Safe Company, the Ohio corporation aforesaid, now existing and a going concern, and during all of said time and long prior to the organization of your orator, said president of your orator, had by reason of his long experience in said business acquired a reputation as an experienced dealer in safes and safe material, which he has given to your orator and which experience and reputation is of very great advantage and value to your orator in its business as aforesaid.

Forasmuch, Therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that said Herring-Hall-Marvin Safe Co., hereby made defendant to this
12 bill, may be required to make a full answer to the same (but not under oath, answer under oath being hereby expressly waived), and that said Herring-Hall-Marvin Safe Co., its officers, agents, servants and employés be restrained by the Injunction of this Court from representing or claiming to be the successor of your orator, from maintaining any signs upon its place of business, or elsewhere, in which your orator's name and trade mark appears, from advertising, circularizing or representing itself to be the successor of or connected with your orator; from using the name of your orator in any publication, book, newspaper, directory, circular, sign or otherwise so as to deceive the public; from in any wise doing or causing to be done any act or thing that would be likely to deceive, confuse or impose upon the public or lead the public to believe that the defendant is in any way connected with your orator, except as a competitor thereof; and that by the mandatory order of this court, the defendant be forthwith ordered to remove such signs so erected as aforesaid, and that your orator may have such other and further relief in the premises as equity may require and to your Honors may seem meet.

And may it please your Honors to grant unto your orator the writ of summons in chancery, directed to the sheriff of the said county of Cook, commanding him that he summon the defendant, Herring-Hall-Marvin Safe Co., a corporation, to appear before the said court on the first day of the next August term thereof, to be held in the

court house in Chicago, in the County of Cook aforesaid, then and there to answer this bill.

And may it please your Honors to grant unto your orator the People's Writ of Injunction to be directed to the said Herring-Hall-Marvin Safe Company and to its officers, attorneys, solicitors, counsel, agents, servants and employees, enjoining and restraining it and them, and each of them as aforesaid, until the further order of this court, and that at the final hearing of this cause that the injunction be made permanent;

And your orator will ever pray.

THE HALL SAFE AND LOCK COMPANY,
By JAMES W. DONNELL, *Its President.*
GEORGE P. MERRICK,
Solicitor and of Counsel.

13 STATE OF ILLINOIS, *County of Cook, ss:*

James W. Donnell, being first duly sworn on his oath, says that he is the president of the complainant corporation; that he has read the foregoing bill subscribed to by him and knows the contents thereof and that the allegations therein contained are true, except such allegations as are therein stated to be upon information and belief, and that as to all of such allegations so stated upon information and belief, he believes them to be true.

JAMES W. DONNELL.

Subscribed and sworn to before me this twenty-eighth day of June, A. D. 1904.
[SEAL.]
ELIZABETH B. EVARTS,
Notary Public.

And afterwards, to-wit: on the 30th day of June, A. D. 1904, a certain Petition was filed in the office of the clerk of said Court, in words and figures following to-wit:

Petition for Removal.

Filed June 30, 1904.

STATE OF ILLINOIS, *County of Cook, ss:*

In the Superior Court of Cook County.

237624.

THE HALL SAFE & LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE CO.

Petition for removal of cause to the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

To the Honorable the Judges of the Superior Court of Cook County in Chancery Sitting:

Your petitioners, Herring-Hall-Marvin Safe Company, defendant in the above entitled cause, appearing for the purpose of filing this

petition and for no other purpose, respectfully shows to this Honorable Court that the matter and amount in dispute in the above entitled suit exceeds exclusive of interest and costs, the sum or value of two thousand dollars ($2,000).

14 That the controversy in said suit is between citizens of different States; that your petitioner, the defendant in the above entitled suit, was at the time of the commencement of the suit, and still is, a resident of and a citizen of the State of New Jersey and a corporation of said State, and a non-resident of the State of Illinois, and that the plaintiff, The Hall Safe & Lock Company was at the date of the commencement of said suit and still is a corporation organized under the laws of the state of Illinois, and a citizen of said State, residing in the City of Chicago therein.

And your petitioner offers herewith a good and sufficient surety for its entering in the Circuit Court of the United States for the Northern District of Illinois and Northern Division thereof, on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And it prays this Honorable Court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond and to cause the record herein to be removed into said Circuit Court of the United States in and for the Northern District of Illinois and Northern Division thereof, and it will ever pray.

HERRING-HALL-MARVIN SAFE COMPANY,
By HOWARD S. MILLER, *Manager.*

LAWRENCE MAXWELL, JR.,
CHARLES H. ALDRICH,
Solicitors for Petitioner.

STATE OF ILLINOIS, *County of Cook,* ss:

Howard S. Miller deposes and says that he is the manager of the above named petitioner, that he has read the above and foregoing petition and that the facts therein stated are true to his own knowledge.

HOWARD S. MILLER.

Subscribed and sworn to before me this thirtieth day of June, A. D. 1904.

WILLIAM R. BRAND,
[SEAL.] *Notary Public.*

15 And on to-wit: on the 30th day of June A. D. 1904, a certain Removal Bond was filed in the office of the clerk o. said Court in words and figures following to-wit:

Bond on Removal.

Filed June 30, 1904.

Bond on Removal.

Know all men by these presents, that we, Herring-Hall-Marvin Safe Company, of the State of New Jersey, as principal, and The United States Fidelity & Guaranty Company as surety, are holden and stand firmly bound unto The Hall Safe & Lock Company, a corporation of Illinois, in the penal sum of five hundred dollars, for the payment whereof well and truly to be made unto the said The Hall Safe & Lock Company, its representatives and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally firmly by these presents.

Upon condition nevertheless, that whereas the said Herring-Mall Marvin Safe Company has petitioned the Superior Court of Cook County, State of Illinois, for the removal of a certain cause therein pending, wherein The Hall Safe & Lock Company is complainant, and the said Herring-Hall-Marvin Safe Company is defendant, to the Circuit Court of the United States in and for the Northern District of Illinois, and to the Northern Division thereof.

Now, if the said Herring-Hall-Marvin Safe Company shall enter in the said Circuit Court of the United States on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto then this obligation shall be void; otherwise it shall remain in full force and virtue.

In Witness Whereof, the said Herring-Hall-Marvin Safe Company and The United States Fidelity and Guaranty Company have hereunto set their hands and seals this thirtieth day of June, A. D. 1904.

HERRING-HALL-MARVIN SAFE COMPANY.
By CHARLES H. ALDRICH, *Attorney.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY.
FRED A. PRICE, *Attorney in Fact.*

[Corporate Seal.]

(Here follows notice not copied.)

16 And on to-wit: on July 1st, A. D. 1904, the same being one of the days of the June term of the Superior Court, the following among other proceedings were had and entered of record in said Court to-wit:

Order of July 1, 1904, Granting Petition for Removal.

237624.

THE HALL SAFE AND LOCK COMPANY (a Corp.)
vs.
HERRING-HALL-MARVIN SAFE CO.

Bill.

On motion of solicitor for defendant and appearing specially herein and upon the filing of the petition and bond of the said defendant herein and the respective parties herein being in Court it is ordered that the said bond be and is hereby approved and the petition herein granted and that said cause be and hereby is removed to the Circuit Court of the United States for the Northern Division and to the next term thereof.

(Here follows notice not copied.)

Certificate of Clerk.

STATE OF ILLINOIS, *County of Cook, ss:*

I, John A. Linn, Clerk of the Superior Court of Cook County, in and for the State of Illinois and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain cause lately pending in said Court on the Chancery side thereof wherein The Hall-Safe and Lock Company (a corp.) was complainant and Herring-Hall-Marvin Safe Co., defendant.

In Witness Whereof I have hereunto set my hand and affixed the seal of said Court at Chicago this 9th day of July A. D. 1904.

[SEAL.] JOHN A. LINN, *Clerk.*

(Endorsed:) Filed July 12, 1904, Marshall E. Sampsell, Clerk.

17 And on to-wit: the fifteenth day of July, 1904, came the defendant in said entitled cause by Mr. Charles H. Aldrich and Mr. Lawrence Maxwell, Jr., and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

Answer.

Filed July 15, 1904.

Answer.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE HALL SAFE & LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE CO.

The Answer of the Herring-Hall-Marvin Safe Company, Defendant, to the Bill of Complaint Filed Herein.

I.

This defendant saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in said bill contained, for answer to so much thereof as it is advised it is necessary or material for it to answer unto, does aver and say that it admits that the complainant is a corporation of the State of Illinois, and was organized on or about May 7, 1898, under the general incorporation act of the State of Illinois, and that its certificate of complete organization was filed for record in the Recorder's office of Cook County, Illinois, as in its said bill alleged, and that the purposes of said organization as expressed in its petition to incorporate were as stated in the complainant's bill herein, and that since the date of its incorporation it has been located at numbers 52 and 54 Wabash Avenue in the City of Chicago, Illinois, and engaged in the business of selling and dealing in safes, safe vaults and deposit vaults, and has advertised itself by signs upon the building occupied by it, and by newspapers, circulars and other methods of advertising as dealers in Hall's safes and
18 does now assert that they are safes manufactured by The Hall's Safe Company of Cincinnati, Ohio, but this defendant is not informed whether the said complainant has been engaged in the manufacture of any safes but on information and belief avers that it has not.

II.

This defendant denies that the complainant has had since its organization and has now the exclusive right to maintain an office and store room in the said city of Chicago for the sale of said Hall's safes, safe vaults and deposit vaults manufactured by The Hall's Safe Company of Cincinnati, Ohio, but on the contrary avers that neither said complainant nor The Hall's Safe Company of Cincinnati, Ohio, has any right to use the name "Hall" in connection with the manufacture, advertisement or sale of safes, safe vaults or deposit vaults, and that the attempt of said complainant and of The Hall's Safe Company of Cincinnati, Ohio, to use the said name is in violation of

the rights of this defendant and constitutes unfair trade and competition on the part of said complainant in this to-wit: about the year 1847 one Joseph L. Hall in connection with his father Edward Hall, who remained in the business for only two or three years, established the business of manufacturing and selling fire proof and burglar proof safes in the city of Cincinnati, Ohio, which was carried on with great success and increasing volume until 1867 under the names of E. Hall & Co., Hall, Dodd & Co., Hall, Carroll & Co. and Joseph L. Hall & Co., the latter being the name under which the business was conducted in 1867 and for many years prior thereto. Joseph L. Hall was the principal and managing member of said concerns. In 1867 he organized a corporation under the laws of the State of Ohio under the name of Hall's Safe & Lock Company, for the purpose of continuing said business, and from 1867 to 1892 said business was carried on by and under the name of said Hall's Safe and Lock Company. Its factory and principal offices were located at Cincinnati, Ohio, with branch offices and sub-agencies all over the United States, including the State of Illinois and the city of Chicago in said State. It also had export trade in Europe, South America, Australia, China and Japan. Its safes acquired great reputation and were known and advertised in all of said countries, as well as throughout the United States, as "Hall's Safes" and "Hall's Standard
19 Safes." Its safes were always marked with the words "Hall's Standard Safes." By the year 1892 it had the largest business of any safe manufacturer in the world. Its sales approximated one half of the entire output of fire proof and burglar proof safes and vaults in the United States.

That on or about May 4, 1892, Herring-Hall-Marvin Company was duly organized as a corporation under the laws of the State of New Jersey, with a capital stock of $3,300,000.00, for the purpose of acquiring and taking over the business and property of said Hall's Safe and Lock Company and the good-will thereof, and also the property and good-will of certain other concerns engaged in carrying on a like business, and for the purpose of carrying on their business as their successor. On or about May 4, 1892, said Hall's Safe and Lock Company transferred, sold, assigned and conveyed to said Herring-Hall-Marvin Company all its real estate, leaseholds, tools, machinery, fixtures, merchandise, trade-marks, trade names and good-will of said business of said Hall's Safe and Lock Company was thereafter carried on by said Herring-Hall-Marvin Company as the successor of said Hall's Safe and Lock Company, including the business in Chicago, Illinois, until December, 1897, occupying the same sales rooms, offices, selling agencies, and continuing to employ most of the former officers, salesmen, agents, clerks and workmen of said Hall's Safe and Lock Company.

IV.

That in December, 1897, said Herring-Hall-Marvin Company became insolvent. George R. Gray and Wright D. Pownall were appointed receivers thereof for its creditors and stockholders by the Circuit Court of the United States for the Third Circuit and District of

New Jersey, and also by the Circuit Court of the United States for the Southern District of Ohio, Western Division, and as such receivers continued to carry on the business of said Herring-Hall-Marvin Company until December 20, 1900, on which day in pursuance of orders and decrees entered by said courts, said Gray and Pownall, receivers, sold and by their deed duly executed, transferred, assigned and conveyed to the complainant all of the real estate, personal property, manufacturing plants, tools, machinery, merchandise, assets franchises, property and good-will of said Herring-Hall-
20 Marvin Company, and the complainant has ever since been the owner thereof, and has continued to carry on the business as the successor of said Herring-Hall-Marvin Company.

V.

That this defendant was organized by the stockholders and creditors of said Herring-Hall-Marvin Company for the purpose of reorganizing and acquiring its property and business and of continuing to carry on the same.

VI.

That said business founded by said Joseph H. Hall in 1847 has been carried on from that time until the present without interruption as a continuing and going concern by said firms of which he was a member and by said Hall's Safe and Lock Company, Herring-Hall-Marvin Company, and the receivers thereof, and this defendant, and this defendant has acquired and owns the trade-marks, trade-names and good-will of all of its predecessors in said business.

VII.

That in March, 1889, said Joseph L. Hall, the founder of said business and the chief stockholder in said Hall's Safe and Lock Company, died. His stock in said company continued to be held by his estate for the equal benefit of his heirs, including his son Edward C. Hall, who had long been connected with said business, and who succeeded his father as president of said Company and continued in said office until the organization of said Herring-Hall-Marvin Company, of which company he was the president and general manager until June 1, 1895, and was thereafter until August 1, 1896, a director of said company and one of its vice-presidents.

VIII.

That upon the organization of said Herring-Hall-Marvin Company, the manufacturing plant at Cincinnati acquired from said Hall's Safe and Lock Company, was designated as "Hall's Safe and Lock Works" and said Company advertised and held itself out and was known in the trade as the successor of said Hall's Safe and
21 Lock Company and as operating said Hall's Safe and Lock Works. Its buildings were covered with signs, lettered "Hall Safe and Lock Works," and its safes were marked "Hall Safe and Lock Works," and designated as "Hall's Standard Safes," and its product was known in the trade generally as "Hall's Standard Safes."

IX.

That said names and designations were taken and used for the purpose of securing to said Herring-Hall-Marvin Company more fully and completely the good-will of said Hall's Safe and Lock Company, to which it was entitled and for which it had paid a large price, and for the purpose of perpetuating and making more certain its title as the successor of said Hall's Safe and Lock Company.

X.

That large sums were spent by said Hall's Safe and Lock Company and Herring-Hall-Marvin Company in advertising said names, and they became widely known as trade names pertaining to said business, and have been used continuously by the receivers of said company and by this defendant since its acquisition of the business.

XI.

That prior to the wrongs complained of against the defendant and hereinafter recited, the name "Hall' was never used in the safe business in the United States or elsewhere otherwise than in connection with the business of this defendant and its said predecessors, except that one E. K. Hall, a brother of said Joseph L. Hall, carried on the safe business at Louisville, Kentucky, more than thirty years ago for less than a year and in a small way under the name of the E. K. Hall Safe and Lock Company; and no person, firm or corporation except this defendant has the right to use the said trade names of "Hall's Safe and Lock Company," "Hall's Safe and Lock Works," "Hall's Safes" and "Hall's Standard Safes," or any trade name essentially or substantially the same.

22 XII.

That for more than twenty years prior to 1886 said Hall's Safe and Lock Company and its predecessors had a branch office and sales room in the city of Chicago for the display and sale of their product, which business they carried on under their own names.

XIII.

That on January 15, 1886, said Hall's Safe and Lock Company entered into an agreement with one James W. Donnell, who then called himself James W. O'Donnell, and one A. L. Deane, recently deceased, under the firm name of A. L. Deane & Company, whereby said Hall's Safe and Lock Company appointed said A. L. Deane & Company its exclusive agents for the sale of its product in the following counties in the State of Illinois, to-wit: Adams, Boone, Brown, Bureau, Cook, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Dupage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Davies, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lee, Lovingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Moultrie, Ogle, Peoria, Platt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford, and also for a large part of the states of Iowa and Wisconsin. In

and by said agreement, said Hall's Safe and Lock Company agreed to sell its product to A. L. Deane'& Company at stipulated prices, and said A. L. Deane & Company agreed to buy all of their supply of goods, including the stock of safes, vaults, etc. then on hand in its Chicago store from said Hall's Safe and Lock Company at stipulated prices, and not to represent or sell safes, vault fronts, iron or steel work of any kind or character or other articles in said line except those manufactured by said Hall's Safe and Lock Company and to keep the name of the latter prominently before the public so that the identity of Hall's Safe and Lock Company should not be lost in the business to be carried on by said A. L. Deane & Company.

23

XIV.

That on June 23, 1890, said Hall's Safe and Lock Company entered into a supplemental agreement with said A. L. Deane & Company to furnish them in conjunction with said agreement of January 15, 1886, consigned stock to be located in a store to be taken and conducted by said A. L. Deane & Company as selling agents at Denver, Colorado.

XV.

That when said business of Hall's Safe and Lock Company was acquired in 1892 by said Herring-Hall-Marvin Company, said agreements were continued between said A. L. Deane & Company and said Herring-Hall-Marvin Company, and said A. L. Deane & Company were the selling agents and representatives of said Hall's Safe and Lock Company and said Herring-Hall-Marvin Company under said agreements from January 15, 1886, until the latter part of 1897, when they failed and ceased to do business as a firm.

XVI.

That on February 21, 1898, the said James W. Donnell and A. L. Deane caused Max Whitney, George Gascoigne and Arthur C. Ide to procure a charter from the State of Illinois for a corporation which is the plaintiff, under the name of "The Hall Safe and Lock Company," with a capital stock of $5,000. The articles of association signed by said Whitney, Gascoigne and Ide stated that the object for which the corporation was formed it "to buy, sell, manufacture, repair, deal in on commission, consignment or otherwise, safes, vaults and deposit vaults, and to engage in the safe deposit vault and kindred business." On the next day said Donnell and Deane caused said company to be organized by subscribing each of them to $2,400.00 of the stock and by causing their attorney, George P. Merrick, to subscribe for $200.00 of said stock. This defendant is informed and believes and avers that said Merrick made said subscription on behalf of said Donnell and Deane; that said Whitney, Gascoigne and Ide had no interest in said corporation, and that the same was formed and said name of "The Hall Safe and Lock Company" was adopted for the fraudulent purpose of obtaining
24 the advantage of the reputation and established trade of said Herring-Hall-Marvin Company and its predecessors, and that

said corporate name was deliberately adopted by said Donnell and Deane for the fraudulent purpose of deceiving the public and appropriating the good-will and reputation of said business then being carried on by said Gray and Pownall, receivers of said Herring-Hall-Marvin Company, and of the predecessors of said Company.

XVII.

That no one by the name of Hall was or ever has been interested in said corporation or in the business carried on in its name.

XVIII.

That said receivers promptly protested to said Donnell and Deane against the use of said name, and your orator since its organization has frequently protested against the use thereof and never consented thereto.

XIX.

That said Donnell and Deane, acting in the name of said corporation, set up the safe business in the sales rooms occupied by them while they were selling agents of said Herring-Hall-Marvin Company, and have continued to occupy the same and to use and display the same signs which they used as such selling agents, and mark their safes with the

XX.

name "Hall Safe and Lock Company," and in every way possible deceive the public into the belief that the safes sold by them, none of which are manufactured by this defendant or its predecessors, are safes of this defendant's manufacture, and that they are carrying on the business of this defendant.

XXI.

And this defendant avers that it has and ever since its organization has had a large trade in the city of Chicago, State of Illinois, and has opened and now maintains a sales-room in the said city of Chicago.

25 XXII.

And this defendant further answering avers that by reason of the unlawful purpose for which the complainant was organized and its unauthorized and unwarranted use of the name of "Hall" in connection with the safes, vaults, etc. advertised and sold by it that it has no property in the name, trade-mark, trade-name, signs, advertisements and reputation as a dealer in safes so manufactured as aforesaid and of safe vaults and deposit vaults so manufactured as aforesaid, and it has not acquired and does not enjoy and is not entitled to acquire and enjoy a high reputation as a dealer in first-class safes and safe material, deposit vaults and the like, and that it does not rightfully sell or deal in safes enjoying the reputation of safes manufactured by The Hall's Safe Company, and it has not acquired and does not enjoy a high reputation as a manufacturer of safe vaults and deposit vaults by reason of long experience in the business

and by reason of the skill acquired by long experience in the construction of deposit vaults, safe vaults and other products of kindred character.

XXIII.

And this defendant denies that the complainant has any right to use the name "Hall" in connection with the safes, deposit vaults or safe material sold by it, or that any of the sons of Joseph L. Hall have any right or power to confer upon the complainant the right to use such name, and alleges that the attempt to so use the name on the part of The Hall's Safe Company of Cincinnati, Ohio, and of the complainant herein is solely inspired by the desire on the part of the complainant and said Cincinnati company to avail themselves of the rights of this defendant acquired as aforesaid, and to deceive the public and intending purchasers into the belief that they are dealing with the original Hall company.

XXIV.

And this defendant admits that The Hall's Safe Company is an Ohio corporation and was organized by virtue of a charter of the State of Ohio on September 15, 1896, and that it has been
26 since on or about said date engaged in the manufacture of safes which it has described and advertised to the public as Hall's safes and manufactured by the Hall's Safe Company, but it avers that said corporation was organized under said name for the express purpose of deceiving intending purchasers and appropriating the good-will of the business of the said Herring-Hall-Marvin Company, the predecessor of this defendant, and of obtaining and diverting the trade of said Herring-Hall-Marvin Company and that said Herring-Hall-Marvin Company did not authorize the complainants or any of the persons incorporating The Hall's Safe Company in the State of Ohio, to use the trade-name of "Hall's Safe and Lock Company" or "The Hall's Safe & Lock Works" or any other name such as "The Hall's Safe Company," essentially or substantially the same, and never consented thereto or to any use of the word "Hall" in connection with the subject of safes, deposit vaults or safe material, but on the contrary immediately protested against the use of said name by said Ohio corporation, and on February 19, 1897, commenced a suit in equity against them in the Circuit Court of the United States for the Southern District of Ohio, Western Division, to enjoin them from engaging in the business of manufacturing or selling fire-proof or burglar proof safes and vaults under the name of the Hall's Safe Company, or any other trade name being essentially and substantially the same as Hall's Safe & Lock Company or Hall's Safe & Lock Works, calculated to deceive the public or intending purchasers into believing that they were dealing with said Herring-Hall-Marvin Company or with the establishment founded by said Joseph L. Hall and carried on by said Hall's Safe & Lock Company, when in fact they were dealing with the said Hall's Safe Company organized as aforesaid.

XXV.

And this defendant avers that on May 3, 1897, the defendants to said suit in the Circuit Court of the United States, Southern District of Ohio, as aforesaid, filed an answer to the said bill of the Herring-Hall-Marvin Company, and subsequently the latter company filed a replication, and that while said suit was pending, to-wit: in December, 1897, said Herring-Hall-Marvin Company became insolvent, and George R. Gray and Wright D. Pownall were appointed receivers thereof for its creditors and stockholders by the
27 Circuit Court of the United States for the Third Circuit and District of New Jersey, and also by the Supreme Court of the State of New York and the city and county of New York, and also by the United States Circuit Court for the Southern District of Ohio, Western Division, and as such receivers continued to carry on the business of said Herring-Hall-Marvin Company until December 20, 1900, on which date, in pursuance of orders and decrees entered by said courts, said Gray and Pownall, receivers, sold and by their deed duly executed, transferred, assigned and conveyed to this defendant all of the real estate, personal property, manufacturing plant, tools, machinery, merchandise, assets, franchises, property and good-will of said Herring-Hall-Marvin Company, and this defendant has ever since been the owner thereof and has continued to carry on said business as the successor of the Herring-Hall-Marvin Company, and whereby it became entitled to the benefit and use of said name "Hall" in connection with the manufacture and sale of safes, deposit vaults and safe material, this company being formed by the stockholders and creditors of said Herring-Hall-Marvin Company for the purpose of reorganizing the company and of acquiring said business and continuing it for their benefit.

XXVI.

And this defendant further avers that on July 10, 1901, this defendant filed a petition in said suit brought in the Circuit Court of the United States for the Southern District of Ohio, Western Division as aforesaid, asking leave to file a supplemental bill as successor of said Herring-Hall-Marvin Company and as the purchaser of its property and assets of every kind and description including the good-will of said company from the receivers thereof, and as the owner of the rights sought to be enforced by said bill of the Herring-Hall-Marvin Company against the there defendants; and on February 22, 1902, the said Circuit Court of the United States for the Southern District of Ohio, Western Division, granted said petition and allowed said supplemental bill to be filed and ordered the there defendants to demur, plead or answer thereto within thirty days. And on March 22, 1902, the there defendants filed a demurrer to said supplemental bill and the same was argued by counsel and submitted to the court at the same term and it was taken under advisement. And on March 26, 1904, the court sustained the de-
28 murrer to said supplemental bill on the ground that the said Herring-Hall-Marvin Safe Company ought to proceed by original bill, and not by supplemental bill, and ordered that said

bill and supplemental bill be dismissed without prejudice, and with leave to said Herring-Hall-Marvin Safe Company, this defendant, to proceed by an original bill against the there defendants, which it has since done, and which suit is now pending and undetermined in said Circuit Court of the United States for the Southern District of Ohio, Western Division.

XXVII.

And this defendant avers that said business founded by said Joseph L. Hall in 1847 has been carried on from that time until the present time without interruption as a continuing business and going concern by said firms of which he was a member, and by said Hall's Safe and Lock Company, Herrin-Hall-Marvin Company, the receivers thereof, and by this defendant, and that this defendant has acquired and owns the trade-marks, trade-names and good-will of all its said predecessors in said business and has used the same ever since its acquisition of the said business, and that the use of any of said trade marks, trade names or goodwill by the complainant herein or The Hall's Safe Company mentioned in paragraph Eighth of said bill and from which the complainant herein pretends to derive its rights to use the name "Hall" in connection with safes, deposit vaults or safe material is fraudulent and has been attempted with the fraudulent purpose of deceiving the public and intending purchasers of safes, deposit vaults and safe material.

XXVIII.

And further answering this defendant says that it admits that it has heretofore occupied and now occupies a certain store room in the building at the southwest corner of Lake and Dearborn Streets in the said city of Chicago, and that at such place its advertises its business by signs reading as in paragraph Eleventh of complainant's bill herein stated. And it avers that by reason of the facts hereinbefore set forth it has a good right to so advertise and that said complainant has no right to call in question the use of said name, and that this defendant was not required to secure the permission of the complainant herein or seek its authority to use the said name,
29 and that the use by this defendant of said name as in said bill stated does not deceive the public, but is a truthful representation to the public and intending purchasers of the business so advertised and displayed by this defendant, and that this defendant was not required to pay any attention to the notice set forth in paragraph Thirteenth of said bill, the service of which is admitted by this defendant, and that this defendant has a right to advertise on said building and in the Lakeside City Directory the fact that it is the successor of the Hall's Safe & Lock Company, the Herring-Hall-Marvin Company and receivers thereof, and is solely entitled to the use of the name "Hall" in connection with safes, deposit vaults and safe material, and that the complainant by reason of the facts aforesaid is not the owner of any good-will in said name or the reputation which said name has acquired in connection with the business of manufacturing and selling safes, safe deposit vaults and safe mate-

rial in the city of Chicago or territory contiguous thereto or in the United States. And this defendant admits that it has not in its place of business any safe or safes or safe material manufactured by The Hall's Safe Company, the corporation mentioned in the Eighth paragraph of complainant's bill herein, and which is itself engaged as hereinbefore set forth in the invasion of this defendant's rights in the premises by reason of its succession to the former firms manufacturing Hall's safes etc. as hereinbefore set forth and that it does not pretend to have any such safes or safe material in its possession or for sale, but it does advertise and assert that it alone is entitled to use the trade name of "Hall's Safe and Lock Company," "Hall's Safe and Lock Works," and the word "Hall's" in connection with safes, deposit vaults or safe material, and that the complainant has no right to the use of such name in any such connection; and having thus fully made answer to said bill, this defendant prays to be hence dismissed with costs.

HERRING-HALL-MARVIN SAFE COMPANY,
By RICHARD T. PULLEN, *Vice Pres't.*

CHARLES H. ALDRICH,
LAWRENCE MAXWELL, JR.,
Solicitors for Defendant.

30 STATE OF OHIO, *Hamilton County, ss:*

I, Richard T. Pullen on oath say that I am Vice President of the Herring-Hall-Marvin Safe Company, defendant in the above entitled cause, that I have read the foregoing answer and that the matters and things in said answer contained are true.

RICHARD T. PULLEN.

Subscribed and sworn to before me, the undersigned, this 14th day of July, A. D. 1904.

JOSEPH L. LACKNER,
[SEAL.] *Notary Public, Hamilton County, Ohio.*

My commission expires Jan. 10, 1906.

(Endorsed:) Filed July 15, 1904 Marshall E. Sampsell, Clerk.

And on to-wit: the fifteenth day of July, 1904, came Herring-Hall-Marvin Safe Company by its solicitors and filed in the clerks' office of said Court its certain Cross-Bill in the words and figures following to-wit:

Cross-Bill.

Filed July 15, 1904.

Cross-Bill.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Cross-Bill. No. 27294.

THE HALL SAFE & LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE CO. and JAMES W. DONNELL.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in Chancery Sitting:

Your orator, Herring-Hall-Marvin Safe Company, a corporation duly organized and existing under the laws of the State of New Jersey, and a citizen of said State, respectfully represents unto
31 the Court that on or about the twenty-ninth day of June, A. D. 1904, The Hall Safe and Lock Company, a corporation organized under the laws of the State of Illinois and a citizen of the city of Chicago and said State, hereinafter named as the defendant herein, exhibited its bill to the Superior Court of Cook County, Illinois, against your orator, in and whereby the said The Hall Safe and Lock Company sought an injunction against your orator enjoining your orator from representing or claiming to be the successor of The Hall's Safe and Lock Company, and from maintaining any signs upon its place of business or elsewhere in which The Hall's Safe and Lock Company's name or trade-mark appears, and from advertising, circularizing, or representing itself to be the successor of or connected with The Hall's Safe and Lock Company, and from using the name of The Hall's Safe and Lock Company in any publication, book, newspaper, directory, circular, sign or otherwise, from in any wise doing or causing to be done any act or thing that would be likely to deceive or impose upon the public or lead the public to believe that your orator is in any way connected with The Hall Safe and Lock Company, except as a competitor thereof, and that by the mandatory order of the court your orator be forthwith ordered to remove certain signs referred to in said bill of complaint, and for such other and further relief in the premises as equity might require and to the Judges of said Court might seem meet.

II.

That thereafter to-wit: on the thirtieth day of June, A. D. 1904, your orator herein filed its petition and bond in said Superior Court of Cook County, Illinois, whereby it prayed a removal of said cause from said Court to the Circuit Court of the United States for the

Northern District of Illinois, Northern Division, which prayer was on the first day of July, A. D. 1904, granted by the order of said Court, and under and in pursuance of which the record in said cause has been removed and is now pending in this Court; and after the filing of said transcript in this Court your orator appeared and put in its answer thereto, as by the said bill and other pleadings and proceedings in the said cause now remaining on file and of record in this Honorable Court, reference thereto being had, will more fully appear.

32 III.

That about the year 1847 one Joseph L. Hall in connection with his father Edward Hall, who remained in the business for only two or three years, established the business of manufacturing and selling fire proof and burglar proof safes in the city of Cincinnati, Ohio, which was carried on with great success and increasing volume until 1867 under the names of E. Hall & Co., Hall, Dodd & Co., Hall, Carroll & Co. and Joseph L. Hall & Co., the latter being the name under which the business was conducted in 1867 and for many years prior thereto. Joseph L. Hall was the principal and managing member of said concern. In 1867 he organized a corporation under the laws of the State of Ohio under the name of Hall's Safe and Lock Company, for the purpose of continuing said business, and from 1867 to 1892 said business was carried on by and under the name of said Hall's Safe and Lock Company. Its factory and principal office were located at Cincinnati, Ohio, with branch offices and sub-agencies all over the United States, including the State of Illinois and the city of Chicago in said State. It also had export trade in Europe, South America, Australia, China and Japan. Its safes acquired great reputation and were known and advertised in all of said countries, as well as throughout the United States, as "Hall's Safes" and "Hall's Standard Safes." Its safes were always marked with the words "Hall's Standard Safes." By the year 1892 it had the largest business of any safe manufacturer in the world. Its sales approximated one half of the entire output of fire proof and burglar proof safes and vaults in the United States.

IV.

That on or about May 4, 1892, Herring-Hall-Marvin Company was duly organized as a corporation under the laws of the State of New Jersey, with a capital stock of $3,300,000.00, for the purpose of acquiring and taking over the business and property of said Hall's Safe and Lock Company and the good-will thereof, and also the property and good-will of certain other concerns engaged in carrying on a like business, and for the purpose of carrying on their business as their successor. On or about May 4, 1892, said Hall's Safe and Lock Company transferred, sold, assigned and conveyed to
33 said Herring-Hall-Marvin Company all its real estate, leaseholds, tools, machinery, fixtures, merchandise, trade-marks, trade names and good-will and said business of said Hall's Safe and Lock Company was thereafter carried on by said Herring-

Hall-Marvin Company as the successor of said Hall's Safe and Lock Company, including the business in Chicago, Illinois, until December, 1897, occupying the same sales rooms, offices, selling agencies, and continuing to employ most of the former officers, salesmen, agents, clerks and workmen of said Hall's Safe and Lock Company.

V.

That in December, 1897, said Herring-Hall-Marvin Company became insolvent. George R. Gray and Wright D. Pownall were appointed receivers thereof for its creditors and stockholders by the Circuit Court of the United States for the Third Circuit and District of New Jersey, and also by the Circuit Court of the United States for the Southern District of Ohio, Western Division, and as such receivers continued to carry on the business of said Herring-Hall-Marvin Company until December 20, 1900, on which day in pursuance of orders and decrees entered by said courts said Gray and Pownall, receivers, sold and by their deed duly executed, transferred, assigned and conveyed to the complainant all of the real estate, personal property, manufacturing plants, tools, machinery, merchandise, assets, franchises, property and good-will of said Herring-Hall-Marvin Company, and the complainant has ever since been the owner thereof, and has continued to carry on the business as the successor of said Herring-Hall-Marvin Company.

VI.

That your orator was organized by the stockholders and creditors of said Herring-Hall-Marvin Company for the purpose of reorganizing and acquiring its property and business and of continuing to carry on the same.

VII.

That said business founded by Joseph L. Hall in 1847 has been carried on from that time until the present without interruption as a continuing and going concern by said firms of which he
34 was a member and by said Hall's Safe and Lock Company, Herring-Hall-Marvin Company, and the receivers thereof, and your orator, and your orator has acquired and owns the trademarks, trade-names and good-will of all of its said predecessors in said business.

VIII.

That in March, 1889, said Joseph L. Hall, the founder of said business and the chief stockholder in said Hall's Safe and Lock Company, died. His stock in said company continued to be held by his estate for the equal benefit of his heirs, including his son Edward C. Hall, who had long been connected with said business, and who succeeded his father as president of said company and continued in said office until the organization of said Herring-Hall-Marvin Company, of which company he was the president and general manager until June 1, 1895, and was thereafter until August 1, 1896, a director of said company and one of its vice-presidents.

VIV.

That upon the organization of said Herring-Hall-Marvin Company, the manufacturing plant at Cincinnati acquired from said Hall's Safe and Lock Company, was designated as "Hall's Safe and Lock Works" and said Company advertised and held itself out and was known in the trade as the successor of said Hall's Safe and Lock Company and as operating said Hall's Safe and Lock Works. Its buildings were covered with signs, lettered "Hall Safe and Lock Works," and its safes were marked "Hall Safe and Lock Works," and designated as "Hall's Standard Safes," and its product was known in the trade generally as "Hall's Standard Safes."

X.

That said names and designations were taken and used for the purpose of securing to said Herring-Hall-Marvin Company more fully and completely the good-will of said Hall's Safe and Lock Company, to which it was entitled and for which it had paid a large price, and for the purpose of perpetuating and making more certain its title as the successor of said Hall's Safe and Lock Company.

35 XI.

That large sums were spent by said Hall's Safe and Lock Company and Herring-Hall-Marvin Company in advertising said names, and they became widely known as trade names pertaining to said business, and have been used continuously by the receivers of said company and by your orator since its acquisition of the business.

XII.

That prior to the wrongs complained of against the defendants and hereinafter recited, the name "Hall" was never used in the safe business in the United States or elsewhere otherwise than in connection with the business of the complainant and its said predecessors, except that one E. K. Hall, a brother of said Joseph L. Hall, carried on the safe business at Louisville, Kentucky, more than thirty years ago for less than a year and in a small way under the name of the E. K. Hall Safe and Lock Company; and no person, firm or corporation except your orator herein has the right to use the said trade names of "Hall's Safe and Lock Company," "Hall's Safe and Lock Works," "Hall's Safes" and "Hall's Standard Safes," or any trade name essentially or substantially the same.

XIII.

That for more than twenty years prior to 1886 said Hall's Safe and Lock Company and its predecessors had a branch office and sales rooms in the city of Chicago for the display and sale of their product, which business they carried on under their own name.

XIV.

That on January 15, 1886, said Hall's Safe and Lock Company entered into an agreement with the defendant James W. Donnell, who then called himself James W. O'Donnell, and A. L. Deane,

recently deceased, under the firm name of A. L. Deane & Company, whereby said Hall's Safe and Lock Company appointed said A. L. Deane & Company its exclusive agents for the sale
36 of its product in the following counties in the State of Illinois, to-wit: Adams, Boone, Brown, Bureau, Cook, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Dupage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Davies, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Moultrie, Ogle, Peoria, Platt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford, and also for a large part of the states of Iowa and Wisconsin. In and by said agreement, said Hall's Safe and Lock Company agreed to sell its product to A. L. Deane & Company at stipulated prices, and said A. L. Deane & Company agreed to buy all of their supply of goods, including the stock of safes, vaults, etc., then on hand in its Chicago store from said Hall's Safe and Lock Company at stipulated prices, and not to represent or sell safes, vault fronts, iron or steel work of — kind or character or other articles in said line except those manufactured by said Hall's Safe and Lock Company and to keep the name of the latter prominently before the public so that the identity of Hall's Safe and Lock Company should not be lost in the business to be carried on by said A. L. Deane & Company.

XV.

That on June 23, 1890, said Hall's Safe and Lock Company entered into a supplemental agreement with said A. L. Deane & Company to furnish them in conjunction with said agreement of January 15, 1886, consigned stock to be located in a store to be taken and conducted by said A. L. Deane & Company as selling agents at Denver, Colorado.

XVI.

That when said business of Hall's Safe and Lock Company was acquired in 1892 by said Herring-Hall-Marvin Company, said agreements were continued between said A. L. Deane & Company and said Herring-Hall-Marvin Company, and said A. L. Deane & Company were the selling agents and representatives of said Hall's Safe and Lock Company and said Herring-Hall-Marvin Company under said agreements from January 15, 1886, until the latter part of 1897, when they failed and ceased to do business as a firm.

37 XVII.

That on February 21, 1898, the said James W. Donnell and A. L. Deane caused Max Whitney, George Gascoigne and Arthur C. Ide to procure a charter from the State of Illinois for a corporation under the name of "The Hall Safe and Lock Company," which is the defendant to this cross-bill, with a capital stock of $5,000. The articles of association signed by said Whitney, Gascoigne and Ide

stated that the object for which the corporation was formed is "to buy, sell, manufacture, repair, deal in on commission, consignment or otherwise, safes, vaults and deposit vaults, and to engage in the safe deposit vault and kindred business." On the next day said Donnell and Deane caused said company to be organized by subscribing each of them to $2400.00 of the stock and by causing their attorney, George P. Merrick, to subscribe for $200.00 of said stock. Your orator is informed and believes and therefore charges that said Merrick made said subscription on behalf of said Donnell and Deane; that said Whitney, Gascoigne and Ide had no interest in said corporation, and that the same was formed and said name of "The Hall Safe and Lock Company" was adopted for the fraudulent purpose of obtaining the advantage of the reputation and established trade of said Herring-Hall-Marvin Company and its predecessors, and that said corporate name was deliberately adopted by said Donnell and Deane for the fraudulent purpose of deceiving the public and appropriating the good-will and reputation of said business then being carried on by said Gray and Pownall, receivers of said Herring-Hall-Marvin Company, and of the predecessors of said company.

XVIII.

That no one by the name of Hall was or ever had been interested in said corporation or in the business carried on in its name.

XIX.

That said receivers promptly protested to said Donnell and Deane against the use of said name and your orator since its organization has frequently protested against the use thereof and never consented thereto.

38

XX.

That said Donnell and Deane, acting in the name of said corporation, set up the safe business in the sales rooms occupied by them while they were selling agents of said Herring-Hall-Marvin Company, and have continued to occupy the same and to use and display the same signs which they used as such selling agents, and mark their safes with the name "Hall Safe and Lock Company," and in every way possible deceive the public into the belief that the safes sold by them, none of which are manufactured by your orator or its predecessors, are safes of your orator's manufacture, and that they are carrying on the business of your orator.

XXI.

That said Deane has recently died and said business is now carried on by said Donnell in said name of "The Hall Safe and Lock Company," and your orator is informed and believes that he and said corporation threaten to continue the same in defiance of the rights acquired by and secured to your orator as aforesaid, and to its great and irreparable loss and injury by which it has been and still is being deprived of great gains and profits which it might

otherwise have obtained but which have been received and enjoyed and are now being received and enjoyed by said Donnell and said corporation by and through their said unlawful acts and doings, and that said Donnell and said corporation have made and realized large profits and advantages from said unlawful acts and doings, but to what extent and how much exactly your orator does not know and prays a discovery thereof, and avers that the recovery to which your orator is entitled exceeds the sum of $5,000.

XXII.

That your orator has and ever since its organization has had a large trade in the city of Chicago and in the State of Illinois, and has opened and maintains a sales room in the said city of Chicago.

39 XXIII.

That said defendants give out and advertise to the public that they have a license to use the name "Hall" and "Hall's Safe and Lock Company," derived from a corporation known as and called The Hall's Safe Company, which was a corporation organized by Edward C. Hall, Willian H. Hall and Charles O. Hall after they ceased to be in the employ of the Herring-Hall-Marvin Company, the predecessors in business to your orator herein, on or about September 9, 1896, under the laws of the State of Ohio, for the purpose of engaging in the business of manufacturing and selling safes and vaults under its corporate name, and this defendant avers that said corporation was organized by said persons as aforesaid with a capital stock placed originally at $100,000.00, but your orator is informed and believes that it has since been increased to $250,000.00.

XXIV.

And your orator charges that said Company was organized under said name for the express purpose of deceiving intending purchasers and of appropriating the good-will of the business of said Herring-Hall-Marvin Company and its predecessors, and of obtaining and diverting the trade of said Herring-Hall-Marvin Company. And in connection with said appropriation of said trade name and good will, said company employed the superintendent of said Herring-Hall-Marvin Company, who had been engaged with it and said Hall's Safe & Lock Company exclusively for twenty-seven years, and also other employés who had been identified for many years with the business of the Herring-Hall-Marvin Company and Hall's Safe and Lock Company.

XXV.

And your orator avers that said Herring-Hall-Marvin Company did not authorize the said Edward C. Hall, William H. Hall, Charles O. Hall, or said Hall's Safe Company or any of them, to use the trade name of "Hall's Safe & Lock Company" or "Hall's Safe & Lock Works," or any other name, such as "The Hall's Safe Company,"

essentially or substantially the same, and never consented
40 thereto; but on the contrary immediately protested against the use of said name by said Halls and said Hall's Safe Company, and on February 19, 1897, commenced a suit in equity against them in the Circuit Court of the United States, Southern District of Ohio, Western Division, to enjoin them from engaging in the business of manufacturing or selling fire proof or burglar proof safes and vaults under the name of the Hall's Safe Company, or any other trade name being essentially and substantially the same as Hall's Safe & Lock Company or Hall's Safe & Lock Works, calculated to deceive the public or intending purchasers in believing that they were dealing with said Herring-Hall-Marvin Company or with the establishment founded by said Joseph L. Hall and carried on by said Hall's Safe & Lock Company, when in fact they were dealing with the defendants who no longer had any relations with your orator or any interest in the good-will or trade-marks or said business as originally established.

XXVI.

That on May 3, 1897, the said Hall's Safe Company and said Edward C. Hall, William H. Hall and Charles O. Hall filed an answer to the said bill of the Herring-Hall-Marvin Company, and subsequently the latter company filed a replication. While said suit was pending, to-wit: in December, 1897, said Herring-Hall-Marvin Company became insolvent, and George R. Gray and Wright D. Pownall were appointed receivers thereof for its creditors and stockholders by the Circuit Court of the United States for the Third Circuit and District of New Jersey, and also by the Supreme Court of the State of New York and the city and county of New York, and also by the Circuit Court of the United States for the Southern District of Ohio, Western Division, and as such receivers continued to carry on the business of said Herring-Hall-Marvin Company until December 20, 1900, on which day, in pursuance of orders and decrees entered by said courts said Gray and Pownall, receivers, sold and by their deed duly executed, transferred, assigned and conveyed to your orator all of the real estate, personal property, manufacturing plant, tools, machinery, merchandise, assets, franchises, property and good will of said Herring-Hall-Marvin Company, and your orator has ever since been the owner thereof and has continued to carry on said business as
41 the successor of said Herring-Hall-Marvin Company.

XXVII.

That your orator was formed by the stockholders and creditors of said Herring-Hall-Marvin Company for the purpose of reorganizing the company and of acquiring said business and continuing it for their benefit.

XVIII.

That on July 10, 1901, your orator filed a petition in said Circuit Court of the United States for the Southern District of Ohio, Western Division, for leave in said cause, which was number 5012, to file a supplemental bill as successor of said Herring-Hall-Marvin Company

and as the purchaser under the orders of said court, from the receivers thereof, of the property and assets of said company, and as the owner of the rights sought to be enforced by said bill of the Herring-Hall-Marvin Company against the defendants heretofore named.

XXIX.

That on February 22, 1902, the said Circuit Court of the United States for the Southern District of Ohio, Western Division, granted said petition and allowed said supplemental bill to be filed and ordered the there defendants to demur, plead or answer thereto within thirty days. On March 22, 1902, the there defendants filed a demurrer to said supplemental bill, and the same was argued by counsel and submitted to the court at the same term and it was taken under advisement. On March 26, 1904, the court sustained the demurrer to the said supplemental bill on the ground that your orator, Herring-Hall-Marvin Company, ought to proceed by original bill and not by supplemental bill, and ordered that said bill be dismissed without prejudice, and with leave to your orator to proceed by an original bill against the there defendants, which it has since done, and which cause is still pending and undetermined in the Circuit Court of the United States for the Southern District of Ohio, Western Division, and in and by which it appears, and your orator avers, that neither said Hall's Safe and Lock Company nor said Edward C. Hall,
William H. Hall, Charles O. Hall, nor any of them, have
42 any right or power to grant or authorize the defendants here
to use the name of the "Hall's Safe and Lock Company" or the name "Hall" in connection with safes, deposit vaults or safe material, or do any other act or thing in violation of the rights belonging to your orator through its succession to the good-will of said business founded by Joseph L. Hall as hereinbefore set forth.

Forasmuch, Therefore, As your orator is without remedy in the premises except by filing this its cross-bill in the said proceedings commenced by the said The Hall Safe and Lock Company against your orator, and to the end that the said The Hall Safe and Lock Company and James W. Donnell, who are hereby made parties defendant to this cross-bill, may be required to make full and direct answer to the same, but not under oath, answer under oath being hereby waived, and that an account may be taken by and under the direction of the court, and that they may be enjoined *pendente lite* and by final decree from carrying on the safe business in the name of "The Hall Safe and Lock Company" or any name of which the word "Hall" is a part, and from marking their safes with any name of which "Hall," is a part, and from advertising or offering safes for sale as "Hall's Safes" or by any name of which the word "Hall" is a part, and that your orator may recover the said profits by said defendants made during the use of the said names, and also the damages which your orator has suffered, and for all other relief to which it may be entitled.

Your orator Prays that a subpœna may be issued herein against the said James W. Donnell, who is a citizen of the State of Illinois, residing in Cook County, requiring him to answer this cross-bill as

aforesaid, and that an order be entered herein requiring the defendant The Hall Safe and Lock Company likewise to answer this cross-bill as aforesaid, and for all such other and further relief in the premises as the nature of the case shall require and to Your Honors shall seem fit.

HERRING-HALL-MARVIN SAFE COMPANY,
[SEAL.] By RICHARD T. PULLEN, *Vice Pres't.*

CHARLES H. ALDRICH,
LAWRENCE MAXWELL, JR.,
Solicitors for Cross-Complainant.

43 STATE OF OHIO, *Hamilton County, ss:*

I, Richard T. Pullen on oath say that I am Vice President of the Herring-Hall-Marvin Safe Company, cross-complainant in the above entitled cause, that I have read the foregoing cross-bill, know the contents thereof and that the matters and things in said cross-complaint contained are true. RICHARD T. PULLEN.

Subscribed and sworn to before me, the undersigned, on this fourteenth day of July, A. D. 1904.

[SEAL.] JOSEPH L. LACKNER,
Notary Public, Hamilton County, Ohio.

My commission expires Jan. 10, 1906.

(Endorsed:) Filed July 15, 1904. Marshall E. Sampsell, Clerk.

And on to-wit: the twenty-first day of July, 1904, came The Hall Safe and Lock Company and James W. Donnell, by their solicitor and filed in the clerk's office of said Court their certain Answer to the Cross-Bill herein in words and figures following to-wit:

Answer to Cross-Bill.

Filed July 21, 1904.

Answer to Cross-Bill

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

No. 27294.

HERRING-HALL-MARVIN SAFE CO.
vs.
THE HALL SAFE AND LOCK COMPANY, and JAMES W. DONNELL.

The Joint and Several Answer of the Hall Safe and Lock Company and James W. Donnell to the Cross-Bill of Complaint of the Herring-Hall-Marvin Safe Company, Defendant to the Original Bill Herein.

These defendants, saving and reserving unto themselves and each of themselves, the benefit of all exceptions to the many errors and

imperfections in said bill contained, for answer to so much
44 thereof as they are advised it is necessary or material for them to answer unto, admit the allegations contained in the first paragraph of the said cross-bill.

2nd. These defendants further answering, admit that said cross-complainant caused the said bill so filed in said Superior Court of Cook County, Illinois, to be removed to the Circuit Court of the United States for the Northern District of Illinois and of the Northern Division thereof, as alleged in said second paragraph of said cross-bill.

3rd. These defendants further answering admit that about the year 1847, one Joseph L. Hall, in connection with his father, Edwin Hall, established the business of manufacturing and selling fire proof safes in the city of Cincinnati, Ohio, under the name stated in said cross-bill in paragraph three thereof.

4th. And these defendants further answering, admit that said Joseph L. Hall was the principal and managing member of said concern; that the said Joseph L. Hall on or about 1867, with others, organized a corporation under the laws of the State of Ohio under the name of Hall's Safe & Lock Company, and that said business was carried on by said corporation from 1867 to the year 1892, and that its factory and principal place of business and office were located at Cincinnati, Ohio, but these defendants neither admit nor deny that said Hall's Safe & Lock Co. had branch offices and sub-agencies all over the United States, or that it had any export trade in South America, China, Japan or Europe, but call for strict proof of these allegations not here admitted.

5th. And these defendants further answering, admit that safes so manufactured by said Hall's Safe & Lock Company, acquired a great reputation and were well known and advertised in the United States as "Hall's Safes" and "Hall's Standard Safes," and that its safes were always designated by being marked with the words "Hall's Safe & Lock Co.," or "Hall's Standard Safes," or some name indicative that they were manufactured by the Hall's Safe & Lock Company.

6th. And these defendants further admit that in the year 1892, said Hall's Safe & Lock Co. had a very large business, but neither admit nor deny that it had the largest business of the kind in the world or that its sales amounted to one-half of the output of burglar proof vaults and safes.

7th. And these defendants further answering, admit that
45 on or about May 4th, 1892, the Herring-Hall-Marvin Company was duly organized as a corporation under the laws of the State of New Jersey with a capital stock of $3,300,000, but deny that the same was organized for the purpose of acquiring and taking over the business of the Hall's Safe & Lock Co. and the good will thereof, as alleged in said cross-bill, but aver that said organization was made to control the safe manufacturing business in the United States and to regulate prices thereof and to stifle competition therein as hereinafter more fully set forth.

8th. And these defendants further answering, deny that on or about May 4th, 1892, said Hall's Safe & Lock Co. sold, assigned or

conveyed to said Herring-Hall-Marvin Company all its leasehold, tools, machinery, fixtures, merchandise, trade marks and trade names and good will, and further deny that said business of said Hall's Safe & Lock Co. was thereafter carried on by said Herring-Hall-Marvin Company as the successors of said Hall's Safe & Lock Co., including the business in Chicago, Illinois, as alleged in said fourth paragraph of said cross-bill; but these defendants admit that on or about said May 4th, 1892, said Hall's Safe & Lock Co. did convey the leasehold interest, tools, fixtures, merchandise, trade marks and good will of the Hall's Safe & Lock Co. and advertised that it would close up its affairs, cause itself to be wound up and dissolved, and would not thereafter engage in or carry on said business, but these defendants deny that in said contract aforesaid, said Hall's Safe & Lock Co. conveyed to cross-complainant any name or trade name or names, or that mention was made in said contract of any name, names, trade name or trade names; and these defendants further answering, aver that said contract did mention good will, but the said contract required said Hall's Safe & Lock Co. to wind up its business and procure itself to be dissolved in accordance with the laws of the State of Ohio and made no provision entitling or authorizing the said Herring-Hall-Marvin Company to use said name of said Hall's Safe & Lock Co. or the name of "Hall" in any way.

9th. And these defendants, further answering, neither admit nor deny that the said Herring-Hall-Marvin Company as successors of said Hall's Safe & Lock Co., occupied the same salesrooms, offices, selling agencies and continued to employ most of the employés and workmen of said Hall's Safe & Lock Co. as charged in said fourth paragraph of said cross-bill, but call for strict proof of all such allegations.

46 10th. These defendants, further answering, admit that in December, 1897, the said Herring-Hall-Marvin Company became insolvent, but neither admit nor deny the remaining averments and allegations in the fifth paragraph of said cross-bill; but call for strict proof of all such allegations.

11th. These defendants further answering, neither admit nor deny the allegations in the 6th paragraph of said cross-bill, but call for strict proof thereof.

12th. These defendants, further answering, deny that the business founded by Joseph L. Hall in 1847 has been carried on from that time until the present time without interruption, as a continuing and going concern as charged in said cross-bill, and deny that said Herring-Hall-Marvin Company and the receivers thereof ever acquired or owned the trade name of Hall's Safe & Lock Company, or the trade name of "Hall" and deny that said cross-complainant has acquired or now owns said trade name or trade names as alleged in said seventh paragraph of said cross-bill or in any other manner or form.

13th. These defendants, further answering, neither admit nor deny the allegations contained in the eighth paragraph of said cross-

bill, but call for strict proof thereof. And these defendants allege that the said corporate trade name of Hall's Safe & Lock Co. or any similar name has been extinct since the dissolution of said corporation and that on or about June 1st, 1895, said Herring-Hall-Marvin Company began and has since continued to use the name, Hall's Safe & Lock Works, not by way of designating itself as successor of the Hall's Safe & Lock Co., nor for the purpose of securing the good will of said company, but for the purpose, in the transaction of its business of making bids and securing contracts in its line of business and of deceiving the public by causing it to appear to and be believed by the public that the Hall's Safe & Lock Co. had severed its connection with the merger, combination, trust or consolidation called Herring-Hall-Marvin Company and had resumed its independent existence and was competing with said Herring-Hall-Marvin Co. in the bidding for and securing contracts for vaults and safes, whereas said bids and contracts in the name of Hall's Safe & Lock Works, were made and controlled by the said consolidated concern known as Herring-Hall-Marvin Company.

14th. And these defendants, further answering, say that said Herring-Hall-Marvin Company was a consolidation, merger
47 or pool, the result of the purchase by said corporation on or about the year 1892 of the property and assets of the following previously existing firms and corporations engaged for many years prior to 1892 in the manufacture of safes and vaults and theretofore competing with each other in the manufacture and selling of safes and vaults throughout the United States and elsewhere, viz: Herring & Company, a firm whose factory and home office was in the City of New York; Marvin Safe Company, a corporation whose factory and home office was in the City of New York; Farrell and Company and Meyers & Smith, both co-partnerships, whose factories and home offices were in the city of Philadelphia, and the Hall's Safe & Lock Company of Cincinnati, Ohio.

15th. And these defendants, further answering, say that in the year 1895, for the purpose of deceiving the public and inducing the said public to believe that it had acquired the right to use the said name, Hall's Safe & Lock Works, and as a part of one and the same general plan having that object in view, the said Herring-Hall-Marvin Company in the state of New York and other Eastern states, began to do business, to make bids and receive contracts under the name Herring Safe Company and Marvin Safe Company, and maintained two stores in New York City, one under the name Herring Safe Company, in which the safes kept on sale were marked with that name; and the other under the name of Marvin Safe Company, in which safes were kept on sale marked with that name; and as a part of the same plan and with the same object in view the business of said Herring-Hall-Marvin Company in Philadelphia was conducted under the name of Farrell Safe Company, and the safes of said Herring-Hall-Marvin Company in that store, bore the name of Farrell & Company, while in Cincinnati, Ohio, and in the Western States generally, the business of said Herring-Hall-Marvin Com-

pany, as a part of the same general plan and the same purpose in view, was conducted from 1895 until the dissolution of said Herring-Hall-Marvin Company, under the said name of Hall's Safe & Lock Works.

17th. And these defendants, further answering, say that all of said business of said Herring-Hall-Marvin Company, at each and every of the said mentioned places and under the several names hereinbefore mentioned and the making of bids and seeking contracts under said several names, was governed, controlled and directed by said Herring-Hall-Marvin Company, said consoli-
8 dated corporation, to whom said several works, factories and places of business under which ever name they were conducted or advertised to be conducted.

18th. And these defendants further answering, deny that said Herring-Hall-Marvin Company, or its Receivers, or the cross-complainant, has any right or authority to use the name of the corporate or trade name of Hall's Safe & Lock Works and that no such corporation, firm or business concern exists having any such name, title or designation.

19th. And these defendants deny that said Herring-Hall-Marvin Company, or its receivers, or the cross-complainant, by any contract made, acquired the right to use the name Hall's Safe & Lock Company, or the name, "Hall's Safe & Lock Works," or any similar name.

20th. These defendants further answering, deny that the name, "Hall's Safe & Lock Works," so placed upon cross-complainant's buildings, as alleged in said cross-bill, was so placed, taken or used for the purpose of securing the said Herring-Hall-Marvin Company's good will in said Hall's Safe & Lock Company, or for the purpose of perpetuating and making more certain its position as successor to Hall's Safe & Lock Company, but such designation of said buildings with the sign, "Hall's Safe & Lock Works" was for the illegal purpose of defrauding and deceiving the public as hereinbefore set forth.

21st. These defendants further answering, admit that during the life of said Hall's Safe & Lock Company, and before it dissolved and ceased doing business and became extinct, large sums of money were paid by it in advertising its said name and said business.

22nd. And these defendants, further answering as to said eleventh paragraph of said cross-bill, say that said Herring-Hall-Marvin Company has not spent large sums of money in advertising the said name of Hall's Safe & Lock Company as charged in said cross-bill of complaint.

23rd. These defendants, further answering, deny that prior to the pretended wrongs alleged in said cross-bill the name "Hall" was never used in the safe business in the United States as alleged in said twelfth paragraph of said cross-bill, but on the contrary thereof these defendants aver that by the agreements entered into between said Herring-Hall-Marvin Company and William H. Hall, Edward C. Hall and Charles O. Hall, who were stockholders and directors of said Hall's Safe & Lock Company, prior to its dissolution and some

of whom were stockholders and directors or officers of said
49 Herring-Hall-Marvin Company, provided in substance for their employment by said Herring-Hall-Marvin Company and their agreement not to engage in the manufacturing or sale of safes, safe vaults and like products, or selling or dealing in such products; that said contracts were entered into between said Herring-Hall-Marvin Company and said Halls, by separate written contracts, made on or about May 12, 1902, and afterwards were cancelled and released by the action of the Executive Committee of said Herring-Hall-Marvin Company on July 2nd, 1896, at which time the said Halls and each of them, were expressly fully released from any and all obligations on their part to said Herring-Hall-Marvin Company, and that thereafter and on or about September 15, 1896, the said William H. Hall, Edward C. Hall, Charles O. Hall and others organized a corporation under the laws of the State of Ohio, under the name of The Hall's Safe Company, and that continuously since that time have manufactured safes under the said name of The Hall's Safe Company, and have advertised the said safes as "Hall's Safes," and these defendants further aver that thereafter and on or about the 19th day of February, 1897, the said Herring-Hall-Marvin Company, filed its certain bill of complaint against The Hall's Safe Company, Edward C. Hall, William H. Hall, Charles O. Hall, Walker P. Hall and A. Acton Hall, in the Circuit Court of the United States within and for the Western Division of the Southern District of Ohio, in and by which bill of complaint the said Herring-Hall-Marvin Company sought to enjoin the said The Hall's Safe Company and said Messrs. Hall above mentioned, from engaging in the business of manufacturing fire proof and burglar proof safes or vaults under the name "The Hall's Safe Company," or under any other name being substantially the same as Hall's Safe & Lock Works, Hall's Safe & Lock Company, or The Hall's Safe Company, and calculated to deceive the public and lead it to believe that intending purchasers were dealing with the Herring-Hall-Marvin Company or by the establishment founded by Joseph L. Hall, to which said bill of complaint the said defendants last above mentioned in said proceedings, filed an answer on the third day of May, 1897, denying substantially all of the material allegations in said bill, and that said litigation so instituted as aforesaid remained entirely dormant until on or about the 10th day of July, A. D. 1901,
50 the said cause having been theretofore continued from time to time, on which said last mentioned date the said cross-complainant herein filed a petition for leave to file a supplemental bill against the said The Hall's Safe Company, Edward C. Hall, William H. Hall, Charles O. Hall, Walker P. Hall, and A. Acton Hall, and that afterwards, and on the 22nd day of February, A. D. 1902, leave was granted said cross-complainant to file said supplemental bill and on the same day the said defendants last named, were given leave to plead, to demur, or to answer said supplemental bill within thirty days therefrom; to which order the defendants last above named, duly excepted. And that afterwards and on said 22nd day of February, 1902, said supplemental bill was filed in and

by which said supplemental bill the said Herring-Hall-Marvin Safe Company sought the same relief as had been theretofore sought by said Herring-Hall-Marvin Company. And these defendants aver that afterwards and on or about the 22nd day of March, A. D. 1902, a demurrer to said suplemental bill was filed by the said The Hall's Safe Company and said Messrs. Halls as aforesaid; and said demurrer to said supplemental bill as by order of the said Circuit Court of the United States in and for the Western Division of the Southern District of Ohio, was sustained, as by the records of said court will more fully and at large appear, and that in and by said decision the said cross-complainant was given leave to file an original bill and that said order last mentioned was entered by said court as aforesaid on the 26th day of March, A. D. 1904. That said The Hall's Safe Company ever since its incorporation, has been actively engaged in the business of manufacturing safes, safe vaults and other like material, and had been so engaged for about two years prior to the time that the defendant herein, The Hall Safe and Lock Company, became incorporated.

24th. These defendants further answering, admit the allegations contained in the thirteenth paragraph of the cross-bill herein.

25th. These defendants further answering, said cross-bill of complaint, and particularly the allegations contained in the fourteenth paragraph thereof, say that by a contract in writing dated January 30, 1886, said Hall's Safe & Lock Company entered into an agreement with the defendant, James W. Donnell and A. L. Deane, then trading as A. L. Deane & Company, substantially as alleged in said fourteenth paragraph of said cross-bill, which said agreement
51 was to take effect February 1st, 1886, to be terminated at any time by either party thereto; and that in addition to the territory named in said contract the said A. L. Deane & Company, were to be permitted to occupy certain other territory not mentioned in said formal agreement, in accordance with a certain letter immediately thereafter written to said A. L. Deane & Company, a copy of which is hereto attached and marked "Exhibit A."

26th. And these defendants, further answering, admit that on or about June 23rd, 1890, that they entered into the agreement as alleged in said cross bill of complaint in the fifteenth paragraph thereof.

27th. And these defendants, further answering said cross-bill of complaint, expressly deny that said agreements last mentioned, were continued between the said A. L. Deane & Company and Herring-Hall-Marvin Company from 1892 until the latter part of 1897, as alleged in said cross-bill, but on the contrary thereof these defendants aver that upon the organization of said consolidated company, the said agreements were discontinued; that on or about the 14th day of June, 1892, said Hall's Safe & Lock Co. and said Herring-Hall-Marvin Company jointly addressed a communication to said A. L. Deane & Company, which said communication was received by them, in which the following announcements to said A. L. Deane & Company were made:

"The Herring-Hall-Marvin Co. having purchased, acquired and

entered into possession of the business, property and good will of Hall's Safe & Lock Co., the said Hall's Safe & Lock Co. have arranged to go into liquidation. Therefore, we desire herein to notify you that the agreement existing between the late Hall's Safe & Lock Co. and A. L. Deane & Co. is hereby terminated. All orders which have been received from you will be recognized, filled and accounted for by The Herring-Hall-Marvin Co., in accordance with the terms of the agreement as heretofore existing between your firm and the late Hall's Safe & Lock Co. A new agreement at an early date is desired between the Herring-Hall-Marvin Company and your firm. Pending the consummation of this agreement, out of courtesy, all orders which you take and send in will be recognized by the Herring-Hall-Marvin Company on the basis of the past agreement between your firm and the Hall's Safe & Lock Co."

28th. These defendants, further answering, aver that no new agreement was ever made between said A. L. Deane & Co. or
52 these defendants and said Herring-Hall-Marvin Company, or cross-complainant, because said Herring-Hall-Marvin Company sought to have the business of A. L. Deane & Company in the selling of the product of the works formerly owned and controlled by the Hall's Safe & Lock Co., turned over to other members of the consolidated or merger company, said latter company to pay said A. L. Deane & Company for the privilege of handling and filling orders that could be obtained and secured by said A. L. Deane & Company, said A. L. Deane & Company to be paid a commission for their refusal to compete with said Herring-Hall-Marvin Company.

29th. These defendants further answering, admit that on or about the 21st day of February, 1898, the said James W. Donnell and A. L. Deane took steps to procure a charter from the state of Illinois, for the corporation under the name of The Hall Safe and Lock Company, with a capital stock of five thousand dollars, but these defendants, further answering, deny that the subscription so made by said Merrick was made on behalf of said Donnell and said Deane, but aver that said subscription was made for a full, complete and valuable consideration and in good faith, and said subscription was afterwards fully paid.

30th. These defendants further answering, expressly deny that said corporation last named, to-wit, The Hall Safe and Lock Company, an Illinois corporation, was formed and said name adopted for the fraudulent purpose of obtaining the advantage of the reputation and established trade of said Herring-Hall-Marvin Company or its predecessor, and expressly deny that said corporate name was deliberately or otherwise adopted by said Donnell and Deane for the fraudulent purpose of deceiving the public and appropriating the reputation and good will of the business then being carried on by the representatives of said Herring-Hall-Marvin Company, or the predecessors thereof, as charged in said cross bill of complaint, but on the contrary thereof, these defendants aver that said The Hall Safe and Lock Company was incorporated in perfect and absolute good faith and with no intent or design to injure said Herring-Hall-

Marvin Company, or to defraud or deceive it or the public or anybody else or for the purpose of appropriating any good will or reputation of said Herring-Hall-Marvin Company, or of the Receivers thereof.

31st. And these defendants further answering, say that said Deane and said Donnell and said incorporators and all those connected with the said The Hall Safe and Lock Company, formed said company under the said name chosen by them for no illegal, unlawful or fraudulent purpose, but for the purpose of continuing the business of selling the safes rightfully sold by them, manufactured by The Hall's Safe Company, an Ohio corporation, and a corporation that had been in existence and doing business and manufacturing safes and safe materials for more than two years prior thereto, and without receiving any protest, request or otherwise, from said receivers or from anybody else.

53

32nd. And these defendants further answering deny that since the incorporation of said company, either said Receivers or said cross-complainant has protested against the use of said name, The Hall Safe and Lock Company.

33rd. And these defendants, further answering, deny the allegations in said cross-bill of complaint contained in the 18th and 19th paragraphs thereof.

34th. And these defendants further answering, allege that prior to the year 1886, the said Hall's Safe & Lock Co. had established and were engaged in the business of selling and dealing in safes and safe material in Chicago on their own account and that in 1886 the said A. L. Deane & Company became the agents of said Hall's Safe & Lock Company, under the agreement referred to aforesaid and that they placed above the door of their salesroom on Dearborn Street a large gilt sign containing the words "Hall's Safes" and upon the show windows of said building the corporate name "Hall's Safe & Lock Co." and that upon their removal in the year 1890 to Number 52 Wabash Avenue, the present place of business of said complainant and cross-defendants, they removed said sign to said last mentioned street number and said name has continuously remained on said building and is there now conspicuously so placed; that upon the show windows of said present place of business appears the words "Hall's Safe & Lock Co." where it was originally placed, it never having been removed from the time it was placed thereon in 1890 to the present time, all of which facts were well known to said Hall's Safe & Lock Co. and to the officers and directors of said Herring-Hall-Marvin Company.

35th. And these defendants, further answering say that at the time of its incorporation the said incorporators thereof and subscribers to its said stock and said Deane and said Donnell well knew that said Hall's Safe & Lock Co. had ceased doing business, was extinct and its charter had been dissolved pursuant to the law of the State of Ohio where said corporation was organized and chartered; and said Donnell and said Deane and said incorporators believed that they, and each of them, had a perfect right to organize the said The Hall Safe & Lock Company, and

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owed no duty to and had no relations with Herring-Hall-Marvin Safe Co., or its receivers, which would in anywise, manner or form prevent them from using the said name so chosen by it; and that the said Deane and the said Donnell wished to perpetuate the name of "Hall" as a characteristic name describing the kind of goods handled by them, being the product of The Hall's Safe Company, and with no wrong or improper motive of any kind and with no intent to perpetrate a fraud upon the public or do any injury to anyone whatsoever.

36th. These defendants, further answering, deny that they have attempted in every possible way or in any way whatsoever to deceive the public into believing that the safes sold by them are safes manufactured by the cross-complainant and expressly deny that they are attempting to deceive the public into believing that they are carrying on the business of cross-complainant, but on the contrary thereof, these defendants expressly aver that they are advertising themselves to be dealers in the safes manufactured by The Hall's Safe Company and are competitors of and in no wise connected with cross-complainant; that the safes manufactured by cross-complainant are labeled and marked "Herring-Hall-Marvin Safe Co.," whereas the safes sold by defendants are labeled and marked and known to the trade generally by "Hall's Safes" manufactured exclusively by The Hall's Safe Company, an Ohio corporation as aforesaid.

37th. These defendants, further answering, admit that A. L. Deane, deceased, departed this life on January 1st, 1903, but deny that the business of The Hall Safe & Lock Company, defendant hereto, is to be continued in defiance of any rights acquired by or secured to cross-complainant, or to its loss or injury; and deny that said defendants to said cross-bill or either of them, have made or realized large or any profits or advantages of any kind from any unlawful act or doing of any sort or nature and especially deny that cross-complainant is entitled to any damages by reason of any acts or doings of either of said defendants to said cross-bill.

38th. And these defendants further answering deny that cross-complaint has ever since its organization or at any time had
55 a large trade in the City of Chicago, but admits that it has recently opened a sales room in the City of Chicago as set forth in the original bill of complaint herein.

29th. The defendants further answering, deny that they give out or advertise to the public that they have a license to use the name "Hall" and "Hall's Safe & Lock Co." derived from The Hall's Safe Company, as charged in said cross-bill.

40th. These defendants, further answering, the twenty-third paragraph of said cross-bill, neither deny nor admit the allegations therein stated, but call for strict proof thereof.

41st. These defendants, further answering, neither admit nor deny any of the allegations in the 24th paragraph of said cross-bill, but allege that the matters and things therein contained are now a matter of litigation between The Hall's Safe Company and the cross-complainant; but these defendants aver that they are, and

each of them *are* informed that the matters and things contained in said litigation now pending between said cross-complainant and said The Hall's Safe Company, are not being prosecuted by said cross-complainant with effect, but for some purpose to these defendants unknown, and refer herein to the allegations hereinbefore contained with reference to the litigation between said parties.

42nd. These defendants, further answering, the 25th paragraph of said bill, neither admit nor deny the same, but call for strict proof thereof, and say that so far as these defendants are concerned, they have no knowledge of the merits of the controversy between said parties, but believe that said cross-complainant does not in said litigation with said The Hall's Safe Company, or in this litigation, come into a court of equity, with clean hands, because it appears from said cross-bill and from the answer herein and from the allegations heretofore stated in this answer, that said cross-complainant was organized with the intent and purpose to violate the laws of the United States and of the several states and was organized to regulate prices and to stifle competition in products manufactured and dealt in by said cross-complainant and that said cross-complainant has slept on its rights and is guilty of laches and negligence in asserting its right, if such right it may be held to have had, in and to the use of the name of "Hall" in its said business; and these defendants expressly aver that said Herring-Hall-Marvin Company did
56 not acquire and never owned or controlled the trade name of "Hall" or "Hall's Safe & Lock Co." or "The Hall Safe and Lock Company" or any like name.

43rd. These defendants, further answering, the 26th paragraph of said cross-bill, neither admit nor deny the same, but aver that when the said Herring-Hall-Marvin Company became insolvent and went into the hands of a receiver or receivers, and when its property was conveyed by said Receivers to said Herring-Hall-Marvin Safe Co., there was no sale, transfer or conveyance of any trade name or trade mark included in said sale and that said Receivers had no right as a matter of law or as a matter of fact, to sell and convey, nor can they sell and convey the right to use the name of "Hall," or any collocation of the word "Hall" to the cross-complainant or to anybody else.

44th. These defendants, further answering, neither admit nor deny the allegations contained in the 27th paragraph of said cross-bill, but call for strict proof thereof.

45th. These defendants further answering, admit that on July 10, 1901, cross-complainant filed a petition as alleged in said cross-bill herein and that said supplemental bill was demurred to as hereinbefore set forth and that said demurrer was sustained as by the records of the Circuit Court of the United States for the Southern District of Ohio, of the Western Division thereof, will more fully appear, but these defendants allege that no bill or bills or other proceedings have ever been had or taken by said cross-complainant or by said Herring-Hall-Marvin Co. or by the receivers of said last mentioned company, against these defendants, or either of them

until the filing of the cross-bill of complaint herein, and that said Herring-Hall-Marvin Company, or its receivers, or said cross-complainant, has never protested against the use by the defendant, The Hall Safe and Lock Company, of its corporate name, trade name, or trade mark, in any manner or form.

46th. These defendants further answering admit, that on the 22nd day of February, 1902, permission was granted cross-complainant to file a supplemental bill as therein alleged, but as to all other matters in said 29th paragraph of said cross-bill, these defendants neither admit nor deny, but call for strict proof of all said allegations.

47th. And these defendants further answering, deny each and every allegation in said cross-bill contained other than the
57 allegations herein expressly admitted or denied, and upon information and belief these defendants aver and charge the fact to be that said cross-complainant is a foreign corporation and has never complied with the Statute of the State of Illinois governing foreign corporations doing business in this state, being an Act in force July 1st, 1899, Sections 67*b*, 67*c*, and 67*d*, Chapter 32, Revised Statutes of the State of Illinois; and these defendants further answering, on information and belief, aver and charge the fact to be that said corporation was organized for and is now doing an illegal business and a business in violation of the law of the United States in force when it was organized; and expressly in violation of an Act to protect trade and commerce against unlawful restraints and monopolies, in force July 2nd, 1890, and the amendments thereto; and that said cross-complainant is a corporation engaged in Interstate Commerce, and that the corporation known as Herring-Hall-Marvin Company, organized as stated in said cross-bill, was also a corporation organized in violation of said Act last mentioned and that its contracts between itself and Hall's Safe & Lock Company, the extinct and dissolved Ohio corporation, were by reason of their terms, absolutely void and of no effect, as by a copy of said contracts ready to be produced in open court, will more fully and at large appear.

48th. And these defendants further answering, expressly deny, that no one by the name of "Hall" was or ever has been interested in said complainant corporation, The Hall Safe and Lock Company, or in the business carried on in its name as alleged in said cross-bill, but on the contrary thereof, these defendants aver that Edward C. Hall and William H. Hall are, and ever since the organization of The Hall Safe and Lock Company, have been interested in said corporation and William H. Hall is now a stockholder of record in said The Hall Safe and Lock Company, the complainant corporation herein.

49th. These defendants further answering, upon information and belief, allege and charge the fact to be that said Herring-Hall-Marvin Company, from the date of its incorporation, as aforesaid, until the time that the said corporation went into the hands of a Receiver, never advertised itself, or claimed to be the successor of

Hall's Safe & Lock Co.; that on the letter-heads used by said Herring-Hall-Marvin Company in the years 1892, 1893, 1894, 1895, 1896 and 1897, sent out letters, correspondence bills, state-
58 ments and the like, upon stationery containing merely the announcement of the business of said firm as follows:

"Herring-Hall-Marvin Company,
Principal Office, Cincinnati,
Factories, Cincinnati, New York and
Philadelphia,"

and

"Herring-Hall-Marvin Company,
Principal Offices, Cincinnati,
Factories: Cincinnati, New York,
Philadelphia,"

together with a list of cities in which sales rooms were established and the names of the officers of said Herring-Hall-Marvin Company. That the defendant, James W. Donnell, then trading as A. L. Deane & Company, received letters, and statements, from said Herring-Hall-Marvin Company, in which no reference to the Hall's Safe & Lock Company was in anywise mentioned and that not until 1898 and after the organization of The Hall Safe and Lock Company, was there any reference in correspondence from the Receivers of the Herring-Hall-Marvin Company, that Herring-Hall-Marvin Company were the successors of The Hall Safe and Lock Company or of Hall's Safe & Lock Co., or that it operated Hall's Safe & Lock Works.

50th. And these defendants further answering, deny that the said cross-complainant is entitled to any relief demanded in said cross-bill or otherwise, as against these defendants, and these defendants pray the same advantage of this answer as if they had specially demurred thereto, and pray that in so far as this cross-bill is concerned, that all the matters and things therein contained, be dismissed and these defendants discharged; and having thus fully made answer to said cross-bill, these defendants pray to be hence dismissed with costs.

THE HALL SAFE AND LOCK COMPANY,
By JAMES W. DONNELL, *Pt.*
JAMES W. DONNELL.

GEORGE P. MERRICK,
Solicitors for Cross-Defendants.

59 (Copy)

Hall's Safe & Lock Co.,
Factory and Principal Office,
Cincinnati.

CINCINNATI, 3, 19, 1886.

To A. L. D. & Co., Chicago, Ill.

DEAR SIR: In reply to your favor of —— 188–

Michigan.	Indiana.
Allegan	Jasper
Barry	Lake
Benzie	La Porte
Berrien	Newton
Cass	Porter
Grand Traverse	Starke
Ionia	St. Joseph.
Kalamazoo	
Kent	
Lake	
Leelenaw	
Manistee	
Mason	
Mecosta	
Muskegon	
Newago	
Ottawa	
Osceola	
Oceana	
St. Joseph	
Van Buren	
Wexford	

And all of the Northern Penninsula.

We have assigned to you the counties named herein, in Mich. & Ind. Also all of the Northern Penninsula of Mich. This is not named in your contract. Don't jump over the lines please.

Yours truly,

HALL'S SAFE & LOCK CO.
GIBSON.

"Exhibit A."

(Endorsed:) Filed Jul., 21, 1904, Marshall E. Sampsell, Clerk.

60 And on to-wit: the twenty-fifth day of July, 1904, came the cross-complainant by its solicitor and filed in the clerk's office of said Court its certain Replication to the answer of cross-defendants in words and figures following to wit:

Replication.

Filed July 25, 1904.

Replication of Cross-Complainant.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Bill.

THE HALL SAFE & LOCK COMPANY, Complainant,
vs.
HERRING-HALL-MARVIN SAFE CO., Defendant.

Cross-Bill.

HERRING-HALL-MARVIN SAFE CO., Cross-Complainant,
vs.
THE HALL SAFE & LOCK CO. and JAMES W. DONNELL, Respondents.

Replication of Cross-Complainant in above cause to the answer of The Hall Safe & Lock Co. and James W. Donnell, Respondents.

This repliant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer for replication thereto saith that it will aver and prove its said cross-complaint to be true and sufficient, and that the said answer is untrue and insufficient; wherefore it prays relief as in said bill set forth.

CHARLES H. ALDRICH,
Solicitor for Cross-Complainant.

(Endorsed:) Filed July 25, 1904, Marshall E. Sampsell, Clerk.

61 And on to-wit: the twelfth day of July, being one of the days of the regular July term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of July 12, 1904.

Order of July 12, 1904, Appointing Special Master.

27294.

THE HALL SAFE AND LOCK COMPANY (a Corp.)
vs.
HERRING-HALL-MARVIN SAFE CO.

This cause coming on to be heard on motion of complainant for a preliminary injunction on the verified bill herein filed,

It is Ordered that the cause be referred to Frank F. Reed, Esq., Special Master to hear said motion and report his finding and recommendation to the court with all practicable despatch.

And afterwards to-wit: on the fifteenth day of July, being one of the days of the regular July term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of July 15, 1904.

Order of July 15, 1904, Amending Order of July 12, 1904.

27294.

THE HALL SAFE AND LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE CO.

By consent of the parties. It is Ordered that the order entered herein on July 12th, 1904, referring this cause to Frank F. Reed, Esq., as Special Master, be amended so as to embrace in said reference the application of the Herring-Hall-Marvin Safe Company, cross-complainant, for an injunction against the defendants to said cross bill, and said Special Master is required to hear said cross-motion and report his finding and recommendation to the court therein.

62 And afterwards to-wit: on the twenty-fourth day of October, being one of the days of the regular July term of said Court 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of October 24, 1904.

27294.

HALL SAFE & LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE CO.

Now come the parties by their solicitors, and thereupon comes on to be heard the report of the Special Master herein, and the Court having heard the same, it is ordered that said report recommending the denial of the original complainant's motion for a preliminary injunction be confirmed, and this cause is retained for further testimony on the question of the confusion of the public in regard to the trade names used by the parties; the defendant and cross-complain-

ant to file affidavits on that point within twenty days; the complainant and cross defendants to file counter affidavits within ten days thereafter.

And on to-wit: the thirteenth day of December, being one of the days of the regular July term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge appears the following entry to-wit:

Injunctional Order of Dec. 13, 1904.

Order of December 13, 1904.

27294. Bill.

THE HALL SAFE AND LOCK COMPANY
vs.
HERRING-HALL-MARVIN COMPANY.

Cross-Bill.

HERRING-HALL-MARVIN SAFE COMPANY
vs.
THE HALL SAFE & LOCK COMPANY and JAMES W. DONNELL.

The motions of the respective parties for an injunction *pendente lite* having come on to be heard upon the bill of the complainant, The Hall Safe and Lock Company, the answer of the defendant, Herring-Hall-Marvin Safe Company, the cross bill of Her-
63 ring-Hall-Marvin Safe Company and the answer of The Hall's Safe and Lock Company and James W. Donnell thereto, the report of Frank F. Reed, Special Master, and the evidence submitted by him with said report, and the exceptions to said Master's Report heretofore filed, and the affidavits since filed by the respective parties in support of their respective motions for injunction herein, together with the testimony for final hearing heretofore taken in the case but not yet concluded, and having been argued by counsel for the respective parties; *and* thereupon, upon consideration thereof, It was Ordered, Adjudged and Decreed that the motion of The Hall's Safe and Lock Company for an injunction herein be denied, and that the bill of complaint of the said The Hall's Safe and Lock Company be and is dismissed at the costs of the said The Hall's Safe and Lock Company, for want of equity; that upon the motion of the cross-complainant a writ of injunction *pendente lite* issued as hereinafter provided against The Hall's Safe and Lock Company and James W. Donnell, and that the Hall's Safe & Lock Company and James W. Donnell, and the servants, agents and employees of each of them, be and they are hereby enjoined pending this suit and until the further order of this court from using or employing the name of Hall's Safe & Lock Company or any other

name similar to or liable to be mistaken for said Hall's Safe & Lock Company, in carrying on the safe and vault business.

To enable said defendants to the cross bill to make the necessary arrangements to carry on their business in some other name, It is Ordered and Decreed that this injunction shall not take effect nor the writ of injunction issue for twenty days from this date, and then only upon the cross-complainant herein giving a bond in the sum of ten thousand dollars, with approved sureties, conditioned according to law.

It is further Ordered and Decreed that said Master's report, in so far as it recommends the matters herein ordered, be confirmed and the exceptions thereto in such matters be overruled and that in all other matters the exceptions to said Master's report be sustained.

Upon the application of the cross-complainant, said cross-complainant is ordered and directed to close its proofs for final hearing within twenty days from this date, the defendants to the cross bill to close their proofs within twenty days thereafter, the cross-complainant to put in its rebuttal proof, if any, within five days
64 thereafter, the testimony already taken by The Hall's Safe & Lock Company and James W. Donnell to sustain the issues under the original bill to stand as testimony in support of the answers of said parties to the cross bill.

And on to-wit: the twenty-third day of December, 1904, came the Herring-Hall-Marvin Safe Company as principal and the United States Fidelity and Guaranty Company, as surety and filed in the Clerk's office of said Court in said entitled cause a certain Injunction Bond in words and figures following to-wit:

Injunction Bond.

Filed Dec. 23, 1904.

Injunction Bond.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Bill. No. 27294.

THE HALL SAFE & LOCK COMPANY, Complainant,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Defendant.

Cross Bill.

HERRING-HALL-MARVIN SAFE COMPANY, Cross Complainant,
vs.
THE HALL SAFE & LOCK COMPANY and JAMES W. DONNELL, Cross Defendants.

Know All Men by These Presents, that the Herring-Hall-Marvin Safe Company as principal and the United States Fidelity and Guar-

anty Company as surety. are held and firmly bound to the Hall Safe & Lock Company and James W. Donnell in the penal sum of Ten Thousand ($10,000) Dollars, for the payment of which they jointly and severally bind themselves, their successors and assigns.

In Witness Whereof they have hereunto set their hands and seals this twenty-second day of December, A. D. 1904.

The Condition of the Above Obligation Is Such, That

65 Whereas, by the Decree of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, an injunction *pendente lite* was granted against the Hall Safe & Lock Company and James W. Donnell, and the servants agents and employees and each of them, until the further order of court, from using the name of The Hall Safe & Lock Company, or any other name similar to or liable to be mistaken for The Hall Safe & Lock Company in carrying on the safe and lock business. All of which more fully and at large appears by order of said court entered the Thirteenth day of December, A. D. 1904.

Now Therefore, if the said complainant shall fail to establish its right to the said injunction *pendente lite*, then the parties bounden hereby, confess and hold themselves liable to the defendants and each of them, their heirs, representatives, successors, and assigns, to the amount named, for all loss or damage, they or any of them may suffer by reason of the said order of injunction entered as aforesaid; otherwise this bond to be void.

HERRING-HALL-MARVIN SAFE CO., [SEAL.]
By CHARLES H. ALDRICH, *Attorney.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
[SEAL.] By GEORGE D. WEBB, *Attorney in Fact.*

(Endorsed:) Filed Dec. 23rd, 1904. Marshall E. Sampsell, Clerk.

And on to-wit: the first day of June, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

66 *Decree of June 1, 1905.*

27294.

HALL SAFE & LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE CO.

HERRING-HALL-MARVIN SAFE COMPANY
vs.
HALL SAFE & LOCK COMPANY and JAMES W. DONNELL.

This cause came on to be heard upon the bill of the complainant, Hall Safe & Lock Company, the answer of the defendant, Herring-

Hall-Marvin Safe Company, the cross-bill of said Herring-Hall-Marvin Safe Company and the answers of Hall Safe & Lock Company and James W. Donnell thereto, together with the proofs taken in said cause in behalf of the respective parties, and the court being duly advised in the premises, finds the issues in favor of the cross-complainant, Herring-Hall-Marvin Safe Company, and against the Hall Safe & Lock Company and James W. Donnell; and it appear-to the Court that in compliance with the orders heretofore entered in this cause, towit: on the thirteenth day of December, 1904, and the sixth day of January, 1905, that the Donnell Safe Company has by sale and assignment succeeded to all of the business of the original complainant herein, Hall Safe & Lock Company, and the said Hall Safe & Lock Company has not changed its name nor surrendered its charter.

It Is Therefore Ordered, Adjudged and Decreed, that the said defendants, Hall Safe & Lock Company and James W. Donnell, its and their successors, assigns, servants, agents and employés of every name and description whatsoever, are enjoined from carrying on the safe and vault business in the name of Hall Safe & Lock Company, or any name of which the name "Hall" is a part, and from marking their safes with any name of which the word "Hall" is a part, and from advertising or offering safes or vaults for sale as "Hall's safes," or by any name of which the word "Hall" is a part, except or unless the safes so offered shall have actually been made and manufactured by the original Hall's Safe & Lock Company, of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the Receivers thereof, or the Herring-Hall-Marvin Safe Company.

67 And this cause is referred to Master in Chancery E. B. Sherman, with directions to take an account of the profits accruing to the said Hall Safe & Lock Company, an Illinois corporation, and James W. Donnell, defendants to said decree, growing out of the unauthorized and unwarranted use of the said name, with directions to report his conclusions thereon to this court.

Be it remembered that on the hearing of said cause the following evidence was produced, offered and heard on behalf of the respective parties, together with the exhibits therein referred to.

Certificate of Evidence.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division:

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE HALL SAFE & LOCK COMPANY, Complainant,
vs.
HERRING-HALL-MARVIN-SAFE COMPANY, Respondent.

HERRING-HALL-MARVIN SAFE COMPANY, Cross-Compl't,
vs.
THE HALL SAFE & LOCK COMPANY and JAMES W. DONNELL, Cross-Def'ts.

Testimony Taken by Agreement of Counsel.

MONDAY, *November 7th*, 1904—2 o'clock, p. m.

Parties met pursuant to said notice.
Present: Mr. Merrick, Mr. Aldrich.

Mr. MERRICK: By agreement of counsel, the testimony is
68 to be taken on behalf of complainant and respondent and defendant and cross-complainant before an examiner to be mutually selected by each party, such testimony to be read in evidence on the merits as if the same had been taken before a Master in Chancery.

Testimony of James W. Donnell.

JAMES W. DONNELL, produced as a witness in behalf of the complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name?
A. James W. Donnell.
Q. Mr. Donnell, you are the President of the Hall's Safe & Lock Company, an Illinois corporation, complainant in the litigation now pending between the Hall's Safe & Lock Company, complainant, and the Herring-Hall Safe & Lock Company, in the United States Court, are you not?
A. I am.
Q. What is your residence?
A. Evanston, Illinois.
Q. How long have you lived in Cook County, Illinois?
A. Twenty-four years.
Q. When did you first come to Chicago?
A. In 1880.
Q. What was your business when you first came to Chicago?

A. I was in the safe business, with Starr & Company, in St. Louis.

Q. When you came to Chicago what was your business?

A. I came up here as the manager for the Hall's Safe & Lock Company.

Q. Where was their place of business at that time?

A. I think 155 Dearborn street, right opposite the First National Bank.

Q. Who was associated with you in business representing Hall's Safe & Lock Company?

A. Mr. C. O. Hall was associated with me at that time.

Q. Where was the principal place of business of the Hall's Safe & Lock Company at that time?

A. Cincinnati, Ohio.

Q. Who was then, if you know, the President of the Ohio corporation, known as the Hall's Safe & Lock Company?

A. Joseph L. Hall.

Q. How long did you continue with C. O. Hall as agent of Hall's Safe & Lock Company of Cincinnati, Ohio, in Chicago?

A. Until 1884, from then on.

69 Q. What did you then do?

A. I run the agency on part salary and part commission until 1886.

Q. And then what happened?

Mr. ALDRICH: Don't lead the witness any more than necessary.

Q. To avoid any objection, you and A. L. Deane went into business?

A. In 1886 we bought the business of the Hall's Safe & Lock Company out, their wagons and stock and what there was here. We paid them in the neighborhood of $42,000 cash.

Q. You entered into a contract at that time, did you not, with the Hall's Safe & Lock Company?

A. Yes, sir.

Q. I show you a paper, marked "duplicate," purporting to have been signed on the 30th of January, 1886, by Hall's Safe & Lock Company, by Joseph L. Hall, President, and by yourself and Mr. Deane, as A. L. Deane & Company, and ask you if that is the paper that was signed at or about the time you say you purchased from the Hall's Safe & Lock Company the stock of goods, horses, wagons, and so forth? (Handing said paper to the witness.)

A. Yes, sir, that is the original; that is one of the originals.

Q. That is the paper that is referred to in the pleadings in this case, with which you are familiar, are you not?

A. Yes, sir.

Mr. MERRICK: I offer that in evidence and ask to have it marked complainant's exhibit "A."

Said paper was thereupon marked "Complainant's Exhibit A, G. W. B." and the same is as follows:

COMPLAINANT'S EXHIBIT A—CONTRACT OF JAN. 15, 1886.

COMPLAINANT'S EX. "A," G. W. B.

Duplicate.

This agreement made and entered into this 15th day of January A. D. 1886 by and between Hall's Safe & Lock Co. (a corporation duly established by the Laws of the State of Ohio), and having a place of business and doing business in the City of Cincinnati, County of Hamilton, and State of Ohio, party of the first part, And A. L. Deane and James W. O'Donnell, under the firm name of A. L. Deane & Co., and having their place of business at Chicago, County of Cook, State of Illinois, party of the second part:

Witnesseth: That the party of the first part hereby agrees
70 to sell to the party of the second part, the following named goods, at the following named prices, viz:

Single Door Fire Proof Safes, Nos. 73, 74, 75, 76, at 33% of list price.

Single Door Fire Proof Safes Nos. 77 and 78 at 32% of list price.

Single Door Fire Proof Safes, Nos. 79 and 80 at 31% of list price.

Single Door Fire Proof Safes, Nos. 81, 82, and 83 at 30% of list price.

Double Door Fire Proof Safes at 30% of list price.

Fire and Burglar Proof Safes at 33% of list price.

Extra for extra weight and work on Burglar Boxes Dwelling House Safe, South-American Safes, Silk, and Sectional Safes at 35% of list price.

Express Messenger Boxes at 35% of list price.

Burglar Proof Safes without dove-tails at 12c per pound.

Burglar Proof Safes dovetailed at 13c per pound.

Burglar Proof Safes all Steel at 16c per pound.

Burglar Proof Vault Fronts at 13c per pound.

Burglar Proof Vault Linings Regular Construction at 10c per pound.

Fire Proof Vault Fronts Flat and Single Geared Bolt Work at 8c per pound.

Fire Proof Vault Fronts, Double Geared Bolt Work at 9c per pound.

Fire Proof Vault Linings at 6c per pound.

Linings for Safes made of one plate of Steel at 11c per pound.

All Steel Jail Work at 12c per pound.

All Iron Jail Work at 7c per pound.

Jail Work mixed (part Steel & part Iron) at 10c per pound.

Fire Proof Locks including handles at $4 50-100 each.

Vault Door Locks (large) including handles at $9.25 each.

Vault Door Locks (small) including handles at $8.00 each.

Drawer Locks at $4.50 per dozen.

Sub-Treasury Boxes, all sizes, from 5″ x 5″ to 10″ x 12″ at $3.00 each.

"T" handles for Fire Proof Safes at $1.00 each.
"T" handles for Large Vault Door Locks $1.25 each.
"T" handles for Small Vault Door Locks $1.00 each.
71 Drawers with "T" Locks $1.50 each.
Bramah Key Blanks finished 75c each.
Blanks for Flat Key Inside Door Locks at 10c each.
Blanks for Flat Key Drawer Locks at 5c each.
Deposit Boxes Catalogue Sizes, and Construction.
In lots of 100 to 500 $3 25-100 per Box.
In lots of 50 to 100 $3 50-100 per Box.
In lots of 25 to 50 4 00-100 per Box.
In lots of 25 $4.50 per Box.
Without Japanned Tin Boxes.

All the above prices are net. for goods delivered on cars to Transportation Companies, in Cincinnati, Ohio.

All the above prices are net cash on Shipment, subject to sight draft.

The party of the second part hereby agrees to buy of Hall's Safe & Lock Co., their goods at prices and terms above stated, and to occupy and do business in a store in Chicago, Illinois.

The said A. L. Deane & Co., further agree said store is to be subject to the approval of the party of the first part, as to location, and appearance, the said A. L. Deane & Co., assuming all liabilities and risks of doing business in said store. The said A. L. Deane & Co., further agree to faithfully represent the goods manufactured by said Hall's Safe & Lock Co., keeping the name of the latter prominently before the public, so the identity of Hall's Safe & Lock Co. will not be lost in the business carried on by said A. L. Deane & Co.

The said A. L. Deane & Co. further agree, and obligate themselves not to represent or sell Safes, Vault Fronts, Iron or Steel Work of any kind or character, or other articles in this line except those manufactured by Hall's Safe & Lock Co.

It is hereby understood that the said party of the first part may increase the price of their goods, but it is understood that no advance shall be made from the prices herein mentioned, until 30 days after written notice of said advance shall have been mailed to the party of the second part.

It is further agreed that said A. L. Deane & Co. are to have control of, and represent the following territory, viz: Adams, Boone, Brown, Bureau, Cook, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Du Page, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Davies, Kane, Kankakee, Kendall, Knox, Lake
La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason,
72 McDonough, McHenry, McLean, Menard, Mercer, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, (No. exclusive right to Sangamon), Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford.

Also the State of Iowa except the following counties viz: Adair, Adams, Audubon, Buena Vista, Carroll, Cass, Cherokee, Clay, Crawford, Dickinson, Fremont, Harrison, Ida, Lyon, Mills, Monona,

Montgomery, O'Brien, Osceola, Page, Plymouth, Pottawattamie, Sac, Shelby, Sioux, Taylor, Woodbury.

Also the State of Wisconsin except the following named counties viz: Barron, Buffalo, Burnett, Douglas, Dunn, Pepin, Pierce, Polk, St. Croix.

The party of the first part reserve the right to sell safes or other articles manufactured, or sold by them, to all persons residing in the Territory that is to be worked by the party of the second part, pr-viding said parties call at their factory, or at their branch offices, or upon any of their salesmen, and the party of the second part shall not be entitled to any commission or compensation whatever on said sales, unless the said persons call upon the party of the first part, or at their Branch Offices, or upon their salesmen, by special request of the party of the second —, and the party of the second part has notified the party of the first part that the said persons would call to examine and purchase at their request; and when such sales are so made, the party of the first part shall allow the party of the second part as a commission for safe or article sold, all that it nets the party of the first part in excess of the price that the party of the second part would have to pay the party of the first part for said safe or article, at prices named in this contract.

The said A. L. Deane & Co. obligate and bind themselves not to buy, or deal in any second hand Safes, Vault Fronts, Locks or other articles other than those which may be taken in trade from time to time for work manufactured by the party of the first part, and bought by the said A. L. Deane & Co. from the party of the first part, by the said A. L. Deane & Co. in the conducting of their business.

Party of the first part shall not be liable for any damages that may arise from its inability to fill any orders which they may receive from the party of the second part, but the party of the first part agrees to use due diligence in filling such orders.

73 Party of the second part shall not endorse, sign, print, or use the name of the party of the first part in any manner that will obligate or bind them, and it is hereby distinctly understood and agreed by the parties hereto, that the party of the first part shall not be held responsible for any act or action of the party of the second part.

If the party of the first part is at any time satisfied that the party of the second part is not working the territory assigned to them under this contract as it should be done, and to the entire satisfaction of the party of the first part, then the party of the first part may send to any or all of said territory as many men as they see proper to sell goods manufactured, or sold by them, and the party of the second part shall not receive, or be entitled to any commission, or compensation of any description for safes or other articles sold by men who are employed on salary, commission or otherwise by the party of the first part in car-ing our (out) this provision.

It is expressly understood and agreed by the parties hereto that any or all verbal agreements by whomsoever made, which will in any

degree alter or modify any of the provisions of this contract shall be null and void.

It is further understood and agreed the said A. L. Deane & Co. are to take all of the stock of Safes, Vaults, &c., now on hand in the Chicago store the new work at contract price, and the second hand goods at such figures as may be mutually agreed upon, also agree to take such other articles of Personal Property as the party of the first part may desire to dispose of, at an agreed on price. The full amount for said stock and other articles to be paid by said A. L. Deane & Co. to said Hall's Safe & Lock Co. in cash.

The said A. L. Deane & Co., further agree to transmit to the party of the first part on receipt of same all letters that may be received by them in relation to the past business of the party of the first part, and agree when necessary to reply to same as the interest of the case may call for, agreeing no charge shall be made against the party of the first part for such services.

It is further understood and agreed this Contract may be terminated at any time by either party hereto.

The withing Agreement to take effect February 1st., 1886.

In witness whereof the said Hall's Safe & Lock Co., have
74 hereunto set their hand & seal at Cincinnati, Ohio, this 30th day of January, A. D. 1886.

HALL'S SAFE & LOCK CO.
JOSEPH L. HALL, *Pres't.*

Witness:

R. T. PULLEN.
G. T. TRUMBULL.

In witness whereof the said A. L. Deane & Co., have hereunto set their hands & seals at Chicago, Illinois, this 16th day of January A. D. 1886.

A. L. DEANE.
JAMES W. O'DONNELL.
A. L. DEANE & CO.

Witness as to A. L. Deane & Co.:

E. C. HALL.

Q. At the time that you entered into this agreement mentioned in this exhibit that we have just offered, where was your place of business?

A. 67 Washington street.

Q. Chicago?

A. Chicago.

Q. How long did you remain at that number?

A. About a year.

Q. And then where did A. L. Deane & Company move to?

A. They moved to Dearborn street, where the Unity building now is, and staid there until 1890.

Q. During the time that you were on Dearborn street, subsequent to the execution of this contract, what was your business?

A. Dealing in safes, vaults, office fixtures—that is, steel office fixtures, time-locks, and so forth.

Q. How did you indicate your place of business with reference to the signs in front of your place of business on Dearborn street where the Unity building now is?

A. We had the windows lettered "Hall's Safe & Lock Company," and above, "Hall's Safe & Lock Company," and on the door "A. L. Deane & Company," "A. L. Deane and James W. Donnell."

Q. Do you mean by that that was the lettering on the window?

A. "Hall's Safe & Lock Company, Safes."

Q. Did you have any other signs that were put up above the door?

A. Well, the firm name was above the door, A. L. Deane & Company.

Q. When you moved from there in 1890 where did you go?

A. In 1890 we went to 52 and 54 Wabash avenue.

75 Q. I show you a contract purporting to have been dated the 23rd of June, 1890, purporting to have been signed by Hall's Safe & Lock Company, by R. T. Pullen, Secretary; A. L. Deane & Company, by A. L. Deane and James W. Donnell, and ask you if that is the signature of A. L. Deane & Company and yourself and Mr. Deane? (Handing said paper to the witness.)

A. Yes, sir.

Q. Do you know whether that is the corporate signature of the Hall's Safe & Lock Company, by R. T. Pullen, Secretary?

A. I think it is. It looks like Mr. Pullen's writing.

Mr. MERRICK: I offer that contract in evidence.

Said document shown the witnes by counsel was thereupon offered in evidence by counsel for complainants; was marked complainants' exhibit "B," G. W. B., and the same is in words and figures following:

COMPLAINANTS' EXHIBIT B—CONTRACT OF JUNE 23, 1890.

COMPLAINANTS' EX. "B," G. W. B.

Agreement.

This agreement made and entered into this 23rd day of June, 1890, by and between Hall's Safe & Lock Company, a Corporation duly established by the laws of the State of Ohio, having a place of business, and doing business in the City of Cincinnati, County of Hamilton, State of Ohio, party of the first part, and A. L. Deane & Company, composed of A. L. Deane and J. W. Donnell, of Chicago, County of Cook, State of Illinois, party of the second part.

Witnesseth: That the said Hall's Safe & Lock Co., party of the first part arranged with A. L. Deane & Co., party of the second part, by contract dated January 15th, 1886, for the sale of their manufactured articles, with head-quarters in Chicago, Ills.

That the said Hall's Safe & Lock Co., party of the first part hereby agrees with the said A. L. Deane & Co., party of the second part to furnish them in conjunction with the agreement aforesaid of January 15th, 1886, certain amount of consigned stock, to be located in a store; to be taken and conducted by the said A. L. Deane & Co., party of the second part, at Denver, Colorado, under the following stipulations, to wit:—

First. It is agreed that Hall's Safe & Lock Co., party of the first part, shall furnish to A. L. Deane & Co., party of the second
76 part on consignment as many safes and such other property as they may deem advisable for the interests of the business, and all goods so furnished shall be known and designated as Stock Consigned.

Second. A. L. Deane & Co., party of the second part is to locate the said Stock Consigned in a proper storehouse, in the City of Denver, Colorado.

Third. Party of the second part agrees to insure all of the Stock Consigned for the benefit of the party of the first part, and all loss, if any, on said Stock Consigned shall be paid to the party of the first part by the party of the second part; all Policies of Insurance issued on said Stock Consigned, to read loss if any, payable first to Hall's Safe & Lock Co., as their interest may appear.

Fourth. Party of the second part is to pay all freights, cartage and all other expenses incurred in shipping and handling of all Stock Consigned, both from and two Cincinnati if returned, and to keep all of said Stock Consigned in first class order and condition, and to sell any and all they can of said Stock Consigned, and when sold remit a New York draft for the net price of the article sold at the figure governed by the said contract between the party of the first part and party of the second part, dated January 15th, 1886.

Fifth. Party of the second part agrees to render to the party of the first part on blanks which will be furnished by the said party of the first part, a weekly report of Stock Consigned on hand, also a report showing the amount of sales made from Stock Consigned.

Sixth. Said Stock Consigned to be held as the property of the party of the first part, and subject to their order at all times, and party of the second part agrees to return to Cincinnati Ohio, when ordered, any or all of said Stock Consigned, and also agrees to prepay freight and all other charges if any on same when shipped from Denver, Colorado. The said Stock Consigned to be kept in the salesroom of the party of the second part in the City of Denver, Colorado.

Seventh. It is hereby expressly understood and agreed by and between the parties hereto, that any and all verbal agreements, by whomsoever made which would in any degree alter or modify any of the provisions of this contract, shall be null and void.

Eighth. This contract to be governed as to its continuations or termination in accordance with the agreement as existing be-
77 tween the party of the first part, and the party of the second part, dated January 15th, 1886.

In witness whereof, the said parties of the first and second parts

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ve hereunto set their hands and seals, this twenty-seventh day of ne, 1890.

HALL'S SAFE & LOCK CO.
R. T. PULLEN, [SEAL.]
Secretary.

Witness:
KATE E. BODINE.
L. DENGHAUSEN.

A. L. DEANE & CO.
A. L. DEANE.
JAMES W. DONNELL.

Witness:
MAUD COLEMAN.
GEO. T. TRUMBULL.

Q. Both of these contracts, one dated in the year 1886 and the ner in the year 1890, have been in whose possession since their ecution?
A. They have been in our possession.
Q. By "our possession" you mean who?
A. A. L. Deane & Company and the Hall's Safe & Lock Company.
Q. That is, the Hall's Safe & Lock Company, the Illinois corpo-ion of which you are president?
A. Yes, sir, the Illinois corporation.
Q. When you moved over to 52 Wabash avenue what change, if y, did you make in your signs and lettering on the windows and ors in front of your place of business?
A. They were lettered about the same, "Hall's Safe & Lock Com-ny, Safes," on the windows; "A. L. Deane & Company" on the ors and the words "Hall's Safes" above the doors; that is the sign. here was no A. L. Deane & Company sign over the Wabash avenue ont. It was only on the door.
Q. Is there now a sign above your place of business on Wabash enue, 52 Wabash avenue, a large sign, with the words "Hall's fes" on it?
A. Yes, sir.
Q. How long has that sign been there?
A. It has been there ever since we have been there, 14 years.
Q. Was it placed there originally or had it been moved from some ace else?
A. It was moved from the Dearborn street store.
Q. Then that sign, "Hall's Safes," was on the Dearborn street store prior to 1890?
A. Yes, sir.
Q. How long had it been there?
A. About three years, I should judge.
Q. Prior to 1886 had you been associated with Mr. Deane in busi-ss?
A. In St. Louis I was.
Q. But not here?
A. Not in Chicago.

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Q. From that date, beginning in 1886, you were engaged in selling, among other things, the product of the factory of the Hall's Safe & Lock Company of Cincinnati, Ohio, were you not?

A. Yes, sir.

Q. How were the safes and other product, bank vaults, boxes and other safe materials labeled or marked as they were consigned or sent to you?

A. They were marked "Hall's Safe & Lock Company," on the front of them, "Cincinnati, Ohio," and "A. L. Deane & Company, Dealers, Chicago," at the bottom, and when we opened a branch at Milwaukee and Omaha they put on our names as dealers at Milwaukee and Omaha and Chicago.

Q. By whom were the words "Hall's Safe & Lock Company," "A. L. Deane & Company," put on?

A. By the factory.

Q. At the factory?

A. Yes, sir, at Cincinnati.

Q. Do you know what process that is, putting those names on? How is it done?

A. They are made by transfers, the same as this decalcomania work is made. They are all made out of transfers.

Q. That is to say the letters are bought and pasted on?

A. The letters are bought already made and then they are varnished over and put on the safe; water is rubbed over them and they come off, leaving the transfers or letters on there, and then they varnish over those letters. That is also the present way of lettering the safes.

Q. How long after 1886, when you were on Dearborn street, and afterwards, in 1890, when you were on Wabash avenue, did you continue to sell or deal in the product of the Hall's Safe & Lock Company?

A. Until about 1892, I think it was, when the Herring-Hall-Marvin Company succeeded——

Q. Succeeded who?

A. Succeeded the Hall's Safe & Lock Company, of Cninti.

Q. In 1892, then, the Hall Safe & Lock Company went out of business, did they?

A. Yes, sir.

Q. And they were succeeded by a corporation known as the Herring-Hall-Marvin Company?

A. Yes, sir.

79 Q. Did you then continue to sell safes manufactured by the Herring-Hall-Marvin Company, successors to the Hall Safe & Lock Company?

A. Yes, sir. Up to 1892 and previous to 1892 we had bought safes from other concerns. The Hall Safe & Lock Company had got their prices up pretty well. This market was a market where we had close competition and in order to get a certain class of goods for the market we had to buy from other people, and we also continued buying from the Herring-Hall-Marvin Company, in the same way we did from the Hall Safe & Lock Company. We paid cash for

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their shipments. If they would ship us a car load of safes to-day they would draw on us or we would remit.

Q. Did you enter into any written contract with the Herring-Hall-Marvin Company about selling their safes?

A. No, sir.

Q. You sold their safes the same as the others?

A. We would go to the factory and buy them. If we found a lot there that we liked we would negotiate for them and buy them. Whenever we sold a large job of safety deposit work we would go down there and negotiate for them; that is, they would set a price, what they would bill them to us for, and we would take the responsibility of putting them in, making our collections and settling the thing up to a finish.

Q. What was the method of doing business between you and the Herring-Hall-Marvin Company after they succeeded to the Hall's Safe & Lock Company of Ohio? Did they sell you on consignment or did you buy from them direct and remit, or how did you do it?

A. They put some goods up here, they asked us if we didn't want some goods on consignment and we told them we would take some, and if they had a stock of goods that they wanted to push on the market they would send them to us on consignment, but nine-tenths of our goods we bought for cash; the cash basis was the understanding on all our large contracts—cash was paid for them.

Q. How were the safes and other safe material you obtained from the Herring-Hall-Marvin Safe & Lock Company, after they succeeded to the Hall's Safe & Lock Company, of Ohio, marked or labeled?

A. For about three months they were labeled Herring-Hall-Marvin Company.

Q. And how long did that labeling, Herring-Hall-Marvin Company, on the safes continue?

A. Well, it continued all the way until 1897, off and on.

80 They had two names. Some of our stock was lettered Herring-Hall-Marvin Company and some of it was lettered Hall's Safe & Lock Works.

Q. When did the Hall's Safe & Lock Works labeling begin?

A. I think about three years after the—about 1892—about 1895—1895.

Q. And how long did the two names then continue, either Hall's Safe & Lock Works or the Herring-Hall-Marvin Company?

A. Well, that continued up to the time we had stopped, the Hall's Safe & Lock Works, up to 1897, when we virtually quit dealing with them.

Q. This was when you were a member of the firm of A. L. Deane & Company?

A. Yes, sir.

Q. Prior to this time had you known Joseph L. Hall, Edward C. Hall, William H. Hall or any other men by the name of Hall connected with the Hall's Safe & Lock Company or the Herring-Hall-Marvin Company?

CLOSE IN CENTER

A. I had been raised with them all.
Q. Then you knew Joseph L. Hall?
A. Very well.
Q. How long have you known him?
A. I have known him for 40 years.
Q. That is forty years ago you first knew him?
A. Yes, sir.
Q. And about the other Halls, who were they? His sons?
A. Edward C. Hall was his son, Charles O. Hall was his son, William H. Hall was his son, Axton Hall was his son and Walker Hall was his son. Those boys were all connected with the busine. at one time or another, but E. C. Hall, the older son, has been most prominent since I have been with them. He and I were schoolmates together.
Q. When, if you know, did Joseph L. Hall die, if he is not now living?
A. I couldn't say for sure; I think it is about 10 years ago.
Q. Well, did he die before 1892, at the time of the organization of the Herring-Hall-Marvin Company?
A. Yes, Mr. Hall must have died about 1890.
Q. He died prior to the absorption of his company by the Herring-Hall-Marvin Company?
A. Yes, he had been dead I should judge about two years, two or three years.
Q. Did the Hall brothers, William and Edward and Acton and Walker and the other one go into the Herring-Hall-Marvin Company?
A. As to that I couldn't say.
Q. Do you know whether Edward did?
A. Yes, sir.
Q. What position did he occupy with them?
A. He was the president of the company.
81 Q. Did William H. go into the business?
A. William H., I think, was the buyer, and he held some official position on the board. I am not sure just what he was now.
Q. How long did the business of A. L. Deane & Company last; when did they go out of business?
A. In 1898.
Q. They went into liquidation in that year?
A. They went into liquidation, yes, sir.
Q. After the firm of A. L. Deane & Company ceased doing business what did you do?
A. We organized the corporation of the Hall's Safe & Lock Company of Chicago under the laws of the State of Illinois.
Q. Who were the officers of that company at the organization of it?
A. Mr. George P. Merrick was the president; Mr. Deane was the secretary—Mr. Deane was the treasurer and I was the secretary.
Q. Is Mr. Deane living?
A. Mr. Deane is now dead.

Q. When did Mr. Deane die?
A. In 1903.
Q. What time of the year?
A. It was in about January—January 3rd. My memory doesn't rve me on that.
Q. About the first of the year?
A. About the first of January, 1903, yes, sir.
Q. At the time of the organization of the Hall Safe & Lock Com- of Chicago, an Illinois corporation, was there in existence any r corporation to your knowledge with the corporate name of all's Safe & Lock Company?
A. No, sir. I took particular pains to go to Cincinnati to see the lall people and they told me that the charter of the old Hall Safe Lock Company had been surrendered.

Mr. ALDRICH: I object to that as incompetent.

Q. Was there in existence at that time any corporation in that ty doing business under any name of Hall's?
A. The Hall Safe Company were doing business at Cincinnati.
Q. Who were the officers, directors or stockholders of the Hall afe Company?
A. The officers were E. C. Hall, president, W. H. Hall, treas- rer,—I think he was treasurer—and Frederick Kemper was the ecretary.
Q. What was the style of their business?
A. The Hall Safe Company.
Q. Where was their place of business in Cincinnati?
A. Near the stock yards, the western portion of the town.
Q. When did they begin doing business, do you know?
A. They began doing business in about 1895 or 1896—1896 I hink it was. Probably it was 1897. I am not sure now. It was around about that time.
Q. In 1896, assuming that they did business in 1896, did you as a partner of the firm of A. L. Deane & Company have ny business dealings with the Hall Safe Company?
A. Yes, sir; we commenced to buy safes from them as soon as hey organized.
Q. Did you at the same time you were buying safes from them, lso buy safes from the Herring-Hall-Marvin Company?
A. Yes, sir.
Q. Did you buy safes also from other people?
A. Yes, sir.
Q. You were engaged at that time in buying safes from different manufacturers?
A. We always have, when we were a corporation or private con- ern.
Q. How was the product of the Hall Safe Company marked?
A. Hall's Safe Company.
Q. What else, if anything, was on the material?
A. That is all—the Hall Safe Company, Cincinnati, Ohio.

Q. Let me refresh your recollection and ask you if it isn't a fact that in addition to the name there was also a trade-mark on it?

A. That was put on two years ago. They just began—I think they got the trade-mark patented and have been using it.

Q. That was a recent matter?

A. Yes, sir.

Q. That trade-mark which I have in mind was an eagle——

A. With outstretched wings and the words "'Hall Safe Company" below it.

Q. That has only been on a couple of years?

A. That has been on two or three years.

Q. At the time that you were buying safes of both the Herring-Hall-Marvin Company and the Hall Safe Company where was the factory of the Herring-Hall-Marvin Company?

A. Cincinnati.

Q. And how long did it remain there? I am talking now of the Herring-Hall-Marvin Company?

A. Yes; the Herring-Hall-Marvin Company's factory left Cincinnati—well, as to that I can't say when they did go. I have forgotten.

Q. Where was the factory of the Hall Safe Company?

A. They were at Cincinnati.

Q. Did you ever visit the original factory of the Hall Safe & Lock Company at Cincinnati?

A. Oh, yes; I was foreman there at one time in the factory.

Q. What lettering or advertising appeared on the plant or factory of the Hall Safe & Lock Company, the Ohio corpora-
83 tion, at the time you speak of?

A. Well, they had their concern's name on, Hall's Safe & Lock Company.

Q. Was that ever painted out at any time after they went out of business? Was it succeeded by the Herring-Hall-Marvin Company?

A. Yes, sir, that was painted out and the Herring-Hall-Marvin Company put on; in fact it was lettered all over.

Q. Did you ever know of a man by the name of Richard Pullen?

A. I knew him for a great many years.

Q. What relation did he sustain, if any, prior to 1892, to the Hall Safe & Lock Company, the Ohio corporation?

A. He was made secretary.

Q. Was he connected by relationship in any way with the Hall people?

A. He was the son-in-law of Joseph L. Hall.

Q. And brother-in-law, then, of the Hall brothers?

A. Brother-in-law of the Hall boys.

Q. Did he go from the Hall Safe & Lock Company, the Ohio corporation, to the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. And as a matter of fact he is with them yet, isn't he?

A. He is with them, so I understand,—with the Herring-Hall-rvin Safe Company?
Q. With the Herring-Hall-Marvin Safe Company?
A. Yes, sir.
Q. What is the Herring-Hall-Marvin Safe Company?
A. I understand that they are the concern that bought out the chinery and tools of the old Herring-Hall-Marvin Company.
Q. The Herring-Hall-Marvin Company, the original company t succeeded the Hall Safe & Lock Company, went out of busi-s, did they?
A. Yes, sir; they went into the hands of a receiver and the receiver d, I understand, their machinery and so forth to the Herring-ll-Marvin Safe Company.
Q. When did the Herring-Hall-Marvin Company, if you know, into the hands of a receiver?
A. I think it was in 1897.
Q. When did the receivership cease and the Herring-Hall-Marvin fe Company buy out the machinery, plant and so forth of the rring-Hall-Marvin Company?
A. That was a short while ago, I think it was 1903—1902, pos-ly; as to that I am not certain.

Q. Well, all right; we will probably get at that in some other way. From the organization of the Herring-Hall-Marvin Company has there ever been in Chicago, if you ow, a branch house or sales office or store operated by the Her-g-Hall-Marvin Company?
A. No, sir.
Q. When, if at all, did the Herring-Hall-Marvin Safe Company the Herring-Hall-Marvin Company open up a place of business Chicago?
A. About June, 1904.
Q. Where did they open up their place of business?
A. Corner of Lake and Dearborn streets.
Q. In Chicago?
A. In Chicago.
Q. How did the signs on their door at the corner of Lake and arborn streets read, if you can recall?
A. The signs on the street read, in very prominent letters, "Hall fe & Lock Company" and below there was, in a little smaller let-s, "Herring-Hall-Marvin Safe Company," and below, in very all letters, was "Successors."
Q. The word "successors?"
A. The word "successors."
Q. How did that sign appear, on what streets?
A. It appeared both on Dearborn and on Lake street, and above e store, on the corner facing the street was the sign "Hall Stand-l Safes."
Q. During the time that you began selling the goods of the Her-g-Hall-Marvin Company in 1902, state whether or not, if you w recall, the words "Hall's Safes," or "Hall's Standard Safes," or

"Standard Safes," ever appeared upon a safe that was sent to you for sale?

A. By the Herring-Hall-Marvin Company?

Q. Yes.

A. No, sir, never.

Q. Have you ever seen, in your business as a dealer, any safes, safes sold or made by the Herring-Hall-Marvin Company, or the Herring-Hall-Marvin Safe Company appear with any other letters than those on the safes?

A. No, sir.

Q. You referred some time ago in your testimony to the use of the words "Hall's Safe & Lock Works;" did that name ever appear upon any buildings or any factory that you ever saw, or upon any safes manufactured by the Herring-Hall-Marvin Company?

A. I understood it appeared at Hamilton, but I never saw it.

Q. You never saw it?

A. No, sir. It appeared on their letter heads and their bill heads to us.

Q. Was there a corporation, so far as you know, known as the Hall's Safe & Lock Works?

A. No, sir, there was never any such corporation organized under the laws of the State——

85 Q. After the organization in 1896 of the Hall Safe Company, did you make any arrangement or contract with them with reference to the sale of their safes?

A. No, sir.

Q. What did you do with reference to the sale of their safes, if anything?

A. Well, we did just the same with them as we used to do with the Herring-Hall or with the Herring-Hall-Marvin Company. We would go down and order them or order them by mail. We would have a stipulated price. If we could agree on a price for a certain safe, we would buy it. If we couldn't get it from them, we would get it from somebody else. That has always been our way of conducting our business.

Q. Prior to the time of your purchase from the Hall Safe & Lock Company, of their stock here, including horses, wagons, and so forth, what had been the method of your business? How did you do business?

A. Well, we did it under the management of the factory at Cincinnati. They virtually dictated the policy of the business. We could hardly hire anybody up here unless they sanctioned it and it was examined by them. Our mode of doing business was practically dictated from Cincinnati.

Q. Well, how were you paid, by commission or by salary?

A. Partly commission and partly salary.

Q. And then, after 1886, when you bought out for $43,000 all this stock of horses, wagons and business, how did you do business with the Hall Safe & Lock Company?

A. We paid them cash for all the safes that they shipped us. We

would go down there and buy our goods, or else we would order them by mail and pay for them when they came.

Q. There is a reference in the contract here to the use of the name "Hall Safe & Lock Company." What did you do with reference to keeping to the front, in the way of advertising the name of "Hall's" during the time that you were dealing in the product of the Hall Safe & Lock Company?

A. We always thought that was sort of superfluous, but at the same time we advertised——

Mr. ALDRICH: I move to strike out what he thought.

The WITNESS: We advertised the safes.

Q. Well, you did keep in front the name of "Hall's" as an advertisement?

A. To a certain extent, yes, sir.

Q. So that at the time of the dissolution of the Hall Safe & Lock Company and the organization of the Herring-Hall-Marvin
86 Company, there was no change made with reference to signs and advertising of the Hall safes by you, as dealers here, is that right?

A. No, there was no change made, Mr. Pullen wanted me to take the name of Hall safes Halls Safe & Lock Co. off of the windows and put on the Herring-Hall-Marvin Co. and we refused to do it.

Q. When was that?

A. That was about 1893, just after the panic. It was in July, I think, after the panic was on.

Q. How did that conversation come up, tell all about it, where did it occur?

A. Well, Mr. Pullen was telling about how successful they had been——

Q. In Chicago?

A. Yes, sir, in Chicago, in my store. He was telling about how successful the Herring-Hall-Marvin people had been, that they wanted—the Executive Board, wanted the names changed all around; that there was a great deal of jealousy in New York and among the different safe fraternities that had joined in a combination, and in order to create or have harmony, he said that they would have to have one name, and I told him that was all right, that we had always advocated the Hall safes; had spent lots of money to do it, and we proposed to still keep it as we had, and we always have done so.

Q. Did the A. L. Deane Company, prior to 1892, operate any other store in which they dealt in the Hall Safe & Lock Company's goods?

A. We had a store at Denver, had a store at Omaha, had a store at Milwaukee, and we carried stock in various other towns, that is, local agents; we had probably ten or fifteen of them.

Q. And how long did those businesses continue until your liquidation in 1898?

A. Until our liquidation in 1898, yes, sir.

Q. How did you label or advertise your places of business in the other cities with reference to the name of the safe you were dealing in?

A. "Hall's Safe & Lock Company's safes, A. L. Deane & Company" and usually the sign "A. L. Deane & Company" above the door. The reason we put the old Hall's Safe sign above our store here was because it was a very nice one, and we were not very particular about having it destroyed. It was a very prominent sign.

Q. That particular large sign you speak of "Hall's Safes" that you got and used on Dearborn street—Whose sign was that?

A. We bought that from the Hall Safe & Lock Company when we bought their agency.

Q. In 1886?

A. In 1886, yes, sir.

87 Q. That sign had been, of course, made by them, and you bought it of them and put it above your store?

A. Yes, sir.

Q. And you have kept it from that time until the present time?

A. Yes, sir, and have it there still.

Q. Have it there yet?

A. Yes, sir.

Q. What method have you in promoting the sale of safes, how do you do it? Do you have agents and solicitors, or how do you do it?

A. We have agents and sub-agents; we have agents canvassing all the time, thoroughly canvassing, and they are the ones that dispose of the product that we sell.

Q. Are they given any instructions with reference to representations made about safes, their origin and manufacture?

A. Yes, sir, they always have their instructions.

Q. What are they told to say with reference to who manufacture the safes, and whose the safes are, who you are and the like, in a general way tell it, tell it in your own way?

A. They are told to represent us in a general way, if they are selling the Hall safes to represent them as being made by the Hall Safe Company of Cincinnati, Ohio, and by the Hall boys, and that we consider the Hall boys make superior products and understand the construction of safes better than any other safe concern in the country. They are men who have been with me a number of years, and they are also men who have quite a trade, as they are very well known, and their representations are taken for a great deal. They understand if a safe is made by the New York people or the Cleveland people, the Cleveland Safe Company, they understand that they ought to tell them that they are made there; the safes are all marked just the same name that they represent them to be to the parties going to purchase them.

Q. Since the organization of the Herring-Hall-Marvin Company, while you were a partner of A. L. Deane & Company, and since you have been an officer and Manager of the Illinois corporation known as the Hall Safe & Lock Company, state whether or not you have represented yourself, or directed your solicitors or salemen to repre-

sent that the safes sold by you were safes manufactured by the Hall Safe & Lock Company of Ohio?

A. No, sir.

Q. In no case?

A. In no case. It wasn't necessary because we knew them to be out of existence, and the public in general knew them to be out of existence, it was well advertised. When the Herring-Hall-Marvin Company and the Hall people consolidated, the public was very generally informed, knew that the Hall Safe & Lock Company went into liquidation.

88

Q. Do you know a man in the safe business in Chicago by the name of Trumbull, George T. Trumbull?

A. Yes, sir.

Q. Was he ever in your service?

A. Yes, sir.

Q. How long was he in your service?

A. He was in my service from 1886 until about the time we went into liquidation.

Q. In 1898?

A. In 1898.

Q. That would be a period of about twelve years?

A. That would be about twelve years, yes, sir.

Q. Mr. Trumbull has made an affidavit in this case, used upon a preliminary hearing for an injunction; have you ever seen that affidavit?

A. Yes, sir.

Q. Did you, in February, 1898——

Mr. ALDRICH: Don't lead him, Mr. Merrick.

Mr. MERRICK: It is going to be difficult to answer this affidavit unless I do lead him.

Q. I hand you the affidavit, or a copy of it, and ask you to examine it, read it, and then state if there is anything in that affidavit which you believe to be untrue or contrary to the facts, state wherein such is your view of the case.

A. I think it is false in every particular. Mr. Deane nor myself, neither one, had any use for Mr. Trumbull after we went into liquidation. We found that he was selling goods for our competitors after we had put him in with the receiver to take charge of our stock, and we also found that he had taken a due bill for money that he owed A. L. Deane & Company, out of the safe, and I don't think after Mr. Deane had found out—I knew that he had I thought I knew that he would not ask Mr. Trumbull to become his partner, and as far as I am personally concerned I knew that Mr. Trumbull was working against the interests of A. L. Deane & Company, two years prior to A. L. Deane & Company going into liquidation.

Q. Did you ever suggest to Mr. Trumbull the advisability of his associating himself with you in the business of the new corporation?

A. No, sir. He is a man that never could be my partner.

Q. Did you ever tell him that by reason of the fact that the Herring-Hall-Marvin Company had passed into the hands of a receiver,

that it would be an opportune time to organize a company under the name of the Hall Safe & Lock Company?

A. No, sir.

89 Q. I show you a paper purporting to be a copy of an affidavit made by George Hambleton Brooks, and hand the same to you, and ask you whether or not you have ever read that affidavit?

A. Yes, sir.

Q. I call your attention to certain features of the affidavit with reference to statements in it to the effect that he was in your employ when you were with the firm of A. L. Deane & Company, that he was in your employ; was he?

A. Yes, sir.

Q. And he afterwards became a salesman for your Company?

A. For the Hall Safe & Lock Company, yes, sir.

Q. Mr. Brooks, in this affidavit, states, not that he was directed by you or by your company, but that it was his custom, sanctioned and authorized by you, to represent that the safes sold by your concern, were safes made by the original corporation known as the Hall Safe & Lock Company, established by Joseph L. Hall, and that this was at the request and by the direction of your Company; will you state what the facts are with reference to that?

A. I am positive that we never told Mr. Brooks to represent that we were selling the goods of the original Hall Safe & Lock Company, for this reason——

Mr. ALDRICH: You can't state your reasons. Just state the facts.

Q. You didn't do it?

A. We did not.

Q. Did you, at the time you gave him any directions or instructions of any kind, go into the subject of the origin of these safes? What representations did you make?

A. I hardly think I did. As Mr. Brooks understood the circumstances himself connected with all these different organizations, it wasn't necessary.

Q. Mr. Donnell, at or about the time of the organization of your corporation, the Hall Safe & Lock Company, did you have any conversation with Mr. Pullen, with reference to the use of the name "Hall" or "Hall Safes" or "Hall Safe & Lock Company" or "The Hall Safe Company"?

A. Not with Mr. Pullen; I did with the Hall boys. Not with him.

Q. Did you have any conversation with anybody representing the Herring-Hall-Marvin Company, or its receivers?

A. No, sir.

Q. With reference to that name?

A. No, sir.

Q. At the time of your organization, as a matter of fact, the Herring-Hall-Marvin Company was in liquidation, in the hands of a receiver, I believe?

A. Yes, sir.

90 Q. Mr. Pullen, in his affidavit, claims to have protested to Mr. Deane about the use of the name. Did you at any

time during the life time of Mr. Deane, hear him say anything with reference to that conversation?

A. He never mentioned it to me at all.

Q. You did talk with the Hall boys, you say, about it?

A. Yes, sir, and their attorney.

Q. Well, what did you say to them?

Mr. ALDRICH: I object to that, as incompetent, immaterial and irrelevant.

Mr. MERRICK: Very well, you need not answer.

Mr. ALDRICH: Well, I withdraw the objection.

Mr. MERRICK: Well, go ahead and answer it.

A. I asked the Hall boys if they had any objection to our using the names. I told them we had got a great many inquiries from advertisements in the papers connected with the Hall people for a number of years and by mail; they kept coming in all the time, and I thought if we would organize the Hall Safe & Lock Company, why, I could get my mail without any trouble, as the mail at the Post-office was stopped one day,—at least, it wasn't stopped, but we were questioned as to whether it belonged to us or not, and he said he had no objection, but we had better see his attorney to see whether we could organize or not; so we saw his attorney, and he told me they had surrendered their charter, had gone into liquidation, and we were at perfect liberty to organize under the name Hall Safe & Lock Company.

Q. Why did you organize under that name?

A. More to get my mail than anything else. It would have been an advantage to me if I had organized the Donnell Safe & Lock Company, I think.

Q. I show you a lot of letter heads——

Mr. MERRICK: Mr. Aldrich, there is a lot of incompetent matter contained in these letters. I want to offer the letter heads, with the understanding that the other matter is not any part of it.

Mr. ALDRICH: Then I suggest that you give the dates of them, and to whom addressed, with the understanding that the text of the letter, unless directly stated that it is offered in evidence, is no part of the letter. Is that right?

Mr. MERRICK: Yes. Preliminary to offering in evidence certain letters which are to be hereafter satisfactorily identified by the witness, I shall offer these letters with the understanding that
91 they are only to be used in evidence in so far as the letter heads or printed part of the letter is concerned, it being understood between counsel, and agreed that the communications themselves are not to be considered in evidence.

Mr. ALDRICH: That is right. I concede that, with the understanding that each letter is to be identified by the examiner as we go along.

Mr. MERRICK: To be identified by the examiner as we go along, certainly.

Q. I show you a series of letters, Mr. Donnell, and ask you to ex-

amine them all, and state if you recognize them as being letters received by you from the Herring-Hall-Marvin Company in the usual course of business, and also from a concern purporting to be called Hall Safe & Lock Works. Just examine them all and see if they were received by you.

(Handing said letters to the witness.)

A. Yes, sir.

Mr. MERRICK: I offer, as complainants' Exhibit "C," three letterheads, a sample of which is annexed hereto, dated, respectively, December 30, 1892, March 20, 1893, and June 27, 1895, said letter heads purporting to be issued by the Herring-Hall-Marvin Company, as indicated by the exhibit, all of said letterheads of said dates named being identical.

Said letterhead, Complainants' Exhibit "C," is as follows:

(Here follows Complainants' Exhibit "C." Withdrawn by leave of Court June 12, 1905, and not copied here.)

Mr. MERRICK: I next offer in evidence, as Complainants' Exhibit "D," under dates June 29, 1896, and September 11, 1896, the letterheads of Hall Safe & Lock Works, both of which are identical with the exhibit hereto appended.

Said letterhead so offered in evidence by counsel for complainants was thereupon marked Complainants' Exhibit "D," G. W. B., and the same is in words and figures following:

(Here follows Complainants' Exhibit "D" withdrawn by leave of Court June 12, 1905, and not reproduced here.)

Q. Mr. Donnell, I show you a bill, purporting to have been rendered your firm March 26, 1897, and ask you if you received that bill from the Herring-Hall-Marvin Company in due course of business? (Handing said bill to the witness.)

A. Yes, sir.

92 Said bill was thereupon offered in evidence by counsel for complainants; was marked Complainants' Exhibit "E," G. W. B., and the same is in words and figures as follows:

(Here follows Complainants' Exhibit "E" withdrawn by leave of Court June 12, 1905, and not reproduced here.)

Mr. MERRICK: I offer three exhibits, all of which are identical with the one hereto annexed, being letterheads upon communications addressed to A. L. Deane & Company, dated respectively September 6, 1894, July 2, 1897, and Septoember 11, 1896; I also offer two exhibits, being letterheads on letters addressed to A. L. Deane & Company from the Hall Safe & Lock Works, dated June and September, 1896, respectively, both being identical with the exhibit hereto attached.

One of said letterheads was thereupon marked Complainants' Exhibit "F," and the same is in words and figures following:

(Here follows Complainants' Exhibit "F" withdrawn by leave of Court given June 12, 1905, and not reproduced here.)

Mr. MERRICK: I also offer in evidence as Complainants' Exhibit "G," letterhead of a letter addressed to A. L. Deane & Company, dated March 26, 1898, purporting to have been sent by the Herring-Hall-Marvin Company.

aid letterhead was thereupon marked Complainants' Exhibit
' G. W. B., and is as follows:
Here follows Complainants' Exhibit "G" withdrawn by leave of
rt given June 12, 1905, and not reproduced here.)
aid letterhead upon letter dated June 27, 1896, marked Complain-
' Exhibit "H," is as follows:
Here follows Complainants' Exhibit "H." Withdrawn by leave
ourt given June 12, 1905, and not reproduced here.)
. Did you receive all of the letters that I have shown you, ex-
ts of which are attached to this testimony, from the Herring-
-Marvin Company, and Hall Safe & Lock Company, with refer-
to the safe business in which you were interested with them on
lates shown on those letters?
. Yes, sir, I took them out of the regular letter files.
. After the organization of the Hall Safe & Lock Company, of Chicago, of which you were an officer and director, did you have any business dealing with the Herring-Hall-Marvin Company?
. No, sir.
. But you did have business dealings with the Hall Safe Com-
y of Cincinnati?
. Yes, sir.
. And you still are engaged in business with them?
. Yes, sir, selling safes for them.
. Prior to that time, and while you were doing business as A. L.
ne & Company, did you have any conversation or dealings with Herring-Hall-Marvin Company, or with Mr. Pullen, representing
n, with reference to the management of their business here in
ago, and the selling of their safes in Chicago in competition with
safes of other manufacturers?
. Prior to the organization of the Hall Safe & Lock Company?
. Yes.
. Oh, yes.
. State what that was.
Ir. ALDRICH: What time and place was it?
Ir. MERRICK: It is difficult to ask these questions without leading, if you will allow me, I will only lead him to this extent——
. I have in mind, prior to the liquidation of the Herring-Hall-
pany—prior to the liquidation of the A. L. Deane Company, and
le you were selling the safes of the Herring-Hall-Marvin Com-
y, did you have any controversy, dispute or difficulty with the
ring-Hall-Marvin Company, with reference to non-competition
he safe business?
. Yes, sir.
. What was it?
. Well, on several occasions——
Ir. ALDRICH: I want to note an objection to this, as immaterial irrelevant.
. On several occasions when we were negotiating with the banks
, namely, the Hibernian Bank, the Pullman Bank, the Stock
ds Bank, and several others, we would write to the factory——

Mr. ALDRICH: I object to that. Don't give the contents of any letters.

A. —asking for figures on a certain class of work. They gave us figures on the work, and we proceeded to sell the banks, and during the time that we were talking and negotiating with the different banks, Mr. Pullen wrote us, wanting us to pull off and allow the——

Mr. ALDRICH: I object to the contents of the letter. The letter is the best evidence.

94 Q. Aside from any written communication, did you have any talk with them?

A. We had talked with them about the exorbitant prices they were charging us for work, the manner in which they were putting us to the trade; we told them we could not deal with them at all; that we were losing money; that we would have to get our goods elsewhere, which we did, and prices were so high that we finally quit giving figures altogether on their work, and began negotiating for other work.

Q. We will come to those Exhibits a little later. Now, coming down to the time after the organization of your Company—this may be a repetition, but if it is I will have to repeat it—I want to go into that subject—you have personally solicited the sale of safes and vault work and bank work, and in so doing have you ever made any representation of any kind by way of inducement, or otherwise, with reference to the origin of the safes, as to where they were manufactured?

Mr. ALDRICH: I object to that, as leading, and the best way is to indicate to him as to what representations he made.

Mr. MERRICK: All right, put it that way.

Q. What representations, if any, have you ever made, with reference to safes, bank work, safety deposit work, and so forth that you have personally solicited since the organization of your company?

A. In selling the work, we represent that it is either made by the Halls or made by the York, or whatever concern we buy it from. Our specifications are drawn up for a certain class of work, and the banker expects that class of work, and most of the time it is made by the Hall people; sometimes it is made by the York, but we never refer to the Herring-Hall-Marvin Company, because we never bought their goods, and have not tried to buy their goods since 1898 and prior to the organization of the Hall Safe & Lock Company. Their prices were high, and the business that we did with them for three or four years prior to 1897 was unsatisfactory.

Q. In speaking of the Halls, and the Hall Safe Company what, if anything, was said with reference to the original Hall Safe & Lock Company of Cincinnati, in those representations?

A. We would explain to the bankers, if the question of the Hall Safe & Lock Company came up—they would quite frequently want to know, and we would tell them that the Hall Safe & Lock Company went into liquidation, surrendered their charter as the Herring-Hall-Marvin Company consolidated and purchased their plant, but
95 the Hall boys, who are the sons of the original Joseph L. Hall, had built a new plant, put in new machinery and were in

better condition to build, work upon our specifications, than anybody else was. It is not necessary to mention the name of the Herring-Hall-Marvin Company in this country. As they were not known, our competitors were the only ones that referred to us in any way, tried to confuse people as to the originality of this institution of the Hall Safe & Lock Company here.

Q. On the safes, deposit vaults, bank work and general safe product that you sold, was the name "Hall Safe & Lock Company" labeled on the safes?

A. Yes, sir.

Q. That you sold, I mean; I am talking now about the safes that were sold prior to the organization of the Herring-Hall-Marvin Company, on that safe work, the name "Hall's Safe & Lock Company, Cincinnati," appeared, did it not?

A. Always, yes, sir.

Q. Does that name appear upon any safes or bank vault material

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manufactured by the Hall Safe & Lock Company?

A. Yes, sir.

Q. Do you put it on your safes?

A. Put "Hall's Safe & Lock Company, Chicago," on work that we build and some work that we sell. Sometimes the Hall boys put it on for us whenever it is necessary.

Q. What is the exact lettering that appears on the product of the Hall Safe Company, on their manufactured safes?

A. The Hall Safe Company, Cincinnati, Ohio.

Q. With any other indication of it?

A. They have a trade mark now that is patented, the eagle with outstretched wings and a small safe in its talons, bearing the name "The Hall Safe Company."

Q. What letters appear upon the safes manufacturing by the Herring-Hall-Marvin Safe Company?

A. All that I have seen are "Herring-Hall-Marvin Safe Company."

Q. Now, you speak of material that you build yourself; what do you build yourself or manufacture yourself?

A. We build quite a number of linings; in fact we have built more vault linings in this territory than any other safe manufacturers. These vault linings are built with an electric lining, and where we put them in, put in the electric lining, we always put the name "Hall Safe & Lock Company" on it, and the Hall Safe & Lock Company letter their doors for us "Hall's Safe & Lock Company, Chicago."

96 Q. But the name "Chicago" always appears on these safes?

A. Always appears, yes, sir.

Q. And these safe vaults that you manufacture in that way are vaults that are let under specifications, are they?

A. Yes, sir, all vaults are let under specifications.

Q. What is the difference in that respect between safe vaults which you manufacture under specifications for banks, and manufactured

safes that are sold and manufactured exclusively by the Hall Safe Company, or other safe manufacturers?

A. A vault is an entirely different proposition from a safe.

Q. I know it is.

A. On a safe the name is not changed from the maker's name to the vault in order to advertise ourselves, in fact, they are our patents, we have our name put on for that purpose.

Q. Then you have a patented vault lining?

A. Yes, sir.

Q. With an electric appliance.

A. Patented steel vault lined with electric appliance.

Q. Which you exclusively manufacture?

A. Yes, sir.

Q. So, when you speak of yourselves as safe manufacturers, you refer not to yourselves as manufacturing safes for stores and rooms but building safe vaults?

A. Yes, sir, safe vaults. We make some safes, a few, but our principal business is making vaults.

Q. You mean deposit vaults and bank vaults?

A. Yes, sir, and linings.

Q. The safes you sell, substantially all of them are safes—that is, small concerns, comparatively speaking, that are manufactured by the Hall Safe Company of Cincinnati, Ohio?

A. Yes, sir.

Q. In soliciting orders for these bank vaults, which you label as the manufacturers, have you ever made, since you have been organized as a corporation, any representations that your concern was the original Ohio corporation?

A. No, sir.

Q. In any case?

A. No, sir.

Q. Have you ever heard of there having been any confusion in the minds of prospective purchasers of safes in this city, or in this particular territory, about the origin of safes manufactured by the Hall Safe Company, and sold by you, and the Herring-Hall-Marvin Company's safes?

A. Only through our competitors, customers coming into the store quite frequently muddle it up, and we explain the condi-
97 tion of the Hall Safe Company and the Hall Safe & Lock Company of Chicago, by telling them that the Hall Safe & Lock Company of Chicago sells the product of the Hall Safe Company of Cin-n-ti and that they manufacture their own patented vaults and do work and build other work under specifications.

Q. These safes that are sold by you, manufactured by the Hall Safe Company, are branded, you say, "The Hall Safe Company?"

A. Yes, sir.

Q. With this trade mark of the eagle?

A. Yes, sir.

Q. Is there anything on the safes to indicate in what city they are manufactured?

A. Yes, sir, "Cincinnati."

Q. Where is the factory of the Herring-Hall-Marvin Company?
A. Hamilton, Ohio.
Q. How long has it been there?
A. I think it has been there since 1894. I am not sure.
Q. Do you know when, as a matter of fact, the original factory Cincinnati that was operated by the Hall Safe & Lock Company, Ohio corporation, was moved to Hamilton? As a matter of t, it wasn't moved until 1897, was it?
A. I don't remember about that. I couldn't say. I will look it and see.
Q. You may be wrong about it being moved earlier then 1894?
A. Yes, I couldn't say.
Q. Where was the original Hall's Safe & Lock Company of Ohio' tory?
A. Corner of Pearl and Plum streets, Cincinnati, Ohio.
Q. Where is the present Hall Company's factory?
A. At the Stock Yards, west of there.
Q. To what use, if any, is the old factory at Cincinnati operated the Hall Safe & Lock Company of Ohio, now put to?
A. I think it is a freight depot.
Q. After the dissolution of the Hall's Safe & Lock Company in 02,—or rather, not the dissolution, but the absorption of it by the rring-Hall-Marvin Company, what was done with that factory, h reference to designating it, what factory it was; did you see it know anything about it?
A. I saw it. They had the name of the Hall Safe & Lock Comy taken off and Herring-Hall-Marvin Company painted on the tory in very large letters.

Whereupon the further taking of testimony was continued until 'clock P. M., Tuesday, November 8, 1904.

TUESDAY, *November 8th*, 1904, 2 o'clock p. m.

Continuation pursuant to adjournment.
Present: Mr. Merrick, Mr. Aldrich.

AMES W. DONNELL, a witness in behalf of complainants, was ther examined in chief by Mr. Merrick and testified as follows:

Q. Mr. Donnell, you are by trade or profession an expert in safes, you not?
A. Yes, sir, considered so.
Q. That has been your business for how many years?
A. About thirty-four years.
Q. Is there now or was there after the Hall Safe & Lock Company olved and was succeeded by the Herring-Hall-Marvin Company— the Hall Safe & Lock Company I mean the old Ohio corpora—was there any difference in the construction of safes or is there difference now in the construction of safes, that is, a marked erence between the safes made by the Herring-Hall-Marvin Comy and the Hall Safe & Lock Company?
A. Oh, yes.

Q. Explain briefly, without using technical terms, what that essential, marked difference is.

A. The old Hall patterns covered dovetails and cone bolts and machine bolts. Those were put in all their approved safes and the work was sold on the merits of that construction. The dovetails, they claimed, kept the plates from separating, the work in the doors, and the cone bolts kept them from separating the plates, as they were put together, by the use of compound explosives. It is a fact they did hold stronger; the construction of the vaults and steel linings—the construction of the cone bolts was a good deal more secure than the screws they *used* to-day. When the Herring-Hall-Marvin Company succeeded the Hall Safe & Lock Company they abandoned to a great extent the cone bolts until, when we stopped buying the work from them, they ceased using the cone bolts altogether and also the dovetails, and went on entirely to the construction of putting up their work by plain straps and screws that puts the work on an equality with every other manufacturer's work regardless of his reputation or anything else.

Q. What is the construction of safes now by the Hall Safe
99 Company, what is the method?

A. The Hall Safe Company construct their linings and their doors just the same as the Herring-Hall-Marvin Company and the Diebold, the Mosler and all of them. The introduction of nitroglycerine cuts quite a figure in the construction of the work and instead of putting in the dovetails as they did before, they leave them out, because there is no necessity for them.

Q. Is there a system of electric lining used by the Herring-Hall-Marvin Company now?

A. No; the Herring-Hall-Marvin Company fight it and always have fought it.

Q. Does the Hall Safe Company use the lining?

A. Yes, they advocate it. The fire-proof safes made by the Hall people, Diebold and Mosler are just the same, the fillings are the same; there never has been any difference.

Cross-examination by Mr. ALDRICH:

Q. I infer you knew Joseph L. Hall from boyhood?

A. Yes, sir.

Q. What is your age, Mr. Donnell?

A. 56 years old.

Q. You must have known him, then, from the time you were about 16 years old?

A. Yes, I have known him from the time that I was 13 years old. He was a neighbor of mine.

Q. Your family was then living in Cincinnati?

A. Yes, sir.

Q. What business was Mr. Hall engaged in at that time?

A. Making safes.

Q. What was his style at that time, if you know?

A. Hall Safe & Lock Company. I think when I first got acquainted with him it was Joseph L. Hall & Company. I am not

ure as to that, but when I went with him in 1870 or 1871 their tyle was Hall Safe & Lock Company.

Q. I infer that when you first commenced to earn your living or tarted in business you entered this business?

A. No, sir; I was a carpenter by trade. I finished up the carpen-er's trade.

Q. For how long?

A. I worked at it for three years.

Q. At what age did you commence work?

A. When I was about 17 years old—I commenced when I was 3 years old; during the war I commenced.

Q. At what age did you discontinue working at the carpenter's rade?

A. I think I was 20 years old when I discontinued the carpenter's trade,—21 years old.

00 Q. Did you then go into the safe business?

A. Yes, sir, with the Hall Safe & Lock Company.

Q. In what capacity?

A. I went in as receiving clerk and had charge of the teams, and om that I was promoted to the foremanship of the lock room, and y knowledge of mechanics put me through when my health broke own and they sent me to St. Louis.

Q. You went there as the representative of the Hall people?

A. Yes, sir; the Hall Safe & Lock Company.

Q. Were you associated with Mr. Deane in St. Louis?

A. Mr. Deane was in partnership with Mr. Starr and myself in . Louis.

Q. When you first went to St. Louis did you go on your own ac-unt as agent for the Hall Safe & Lock Company?

A. No, I went there as their bookkeeper.

Q. How long did you remain there in that capacity?

A. I think for about three years, two or three years.

Q. Who had charge of the office?

A. Mr. Starr.

Q. Was Mr. Deane associated with him?

A. No, sir.

Q. At what time did Mr. Deane come into the business?

A. About 1873 or 1874.

Q. And what year was it that you went to St. Louis?

A. 1871, I think, or about 1872. I just remember the panic. I not good on dates.

and

Q. At what time was this firm of Starr & Deane and Donnell rmed?

A. It was Starr & Company. It was formed in 1874, I think it s, 1873 or 1874.

Q. Were you a member of it at that time?

A. Yes, sir. I furnished the money for it or my brother did.

Q. How long did that firm continue?

1885

A. It continued until 1879, when Mr. Deane withdrew, and I

think Starr & Company continued for three or four years after that, when they failed.

Q. Did you remain with them up until the time of the failure?

A. I remained with them until 1880. They failed after 1880, after I left them.

Q. You had withdrawn, then, prior to the failure?

A. Yes, sir; I came here as the manager of the Hall Safe & Lock Company in 1880.

Q. Was Mr. Deane associated with you in the management here first?

A. No, sir, only as a partner.

Q. As a partner?

A. Yes, sir.

Q. Well, was he a partner from the first?

A. No, sir.

101 Q. How long were you alone here as manager for the Hall Safe & Lock Company?

A. Probably three years. Mr. Hall's son was with me and he went to Cincinnati, I think, in 1883 or 1884.

Q. That was C. O. Hall, wasn't it?

A. Yes, sir, that was C. O. Hall.

Q. In what year was it Mr. Deane came?

A. Mr. Deane came in 1886, came up in January, 1886, and we bought them out in February, 1886.

Q. Were the works at the time you first knew them at Cincinnati large works?

A. Yes, sir, quite large; not one-half the size they were when Mr. Hall died. The business had increased.

Q. It increased very rapidly from 1867 on until 1890, didn't it?

A. Yes, sir; all the safe men's business has increased.

Q. At the time Mr. Joseph Hall died it had become a very large business, had it not?

A. Yes, sir, quite a large business.

Q. Was it as large or larger than any other safe business in the United States?

A. No, I think Herring did more business than the Hall people. I think they did a larger business.

Q. You think so?

A. As to that I couldn't say positively. That was generally understood among the safe men. The Herring people had the eastern country, where there is more capital and more money and they did more business.

Q. They didn't do nearly as much business in this locality did they?

A. No, they did practically nothing at all.

Q. Halls did the largest business in Chicago and through the west here, did they?

A. Well, when I came here they did the smallest business. The Diebold people were away ahead of us.

Q. In what year was that?

A. 1880; they did more business than we did.

Q. But from that time up to 1898 how was it?

A. Well, I guess we have done more business than Diebold has, or anybody else.

Q. Was the growth rapid from 1880 to 1886?

A. No, sir, it was slow. The factory was complaining about the business; that is the reason I bought it out. They wouldn't run the agency the way I wanted it.

Q. The rapid growth was after this contract with you and Mr. Deane in 1886?

A. Yes, sir.

102 Q. But it was a very rapid growth?

A. Not a very rapid growth. It was hard work and legitimate work; that is what brought it to the front. That is about all.

Q. Did you cover a pretty extensive territory?

A. Yes, sir, we covered all the Northwest.

Q. Including in the Northwest what?

A. Well, we took in Nebraska, Colorado, Utah, New Mexico, Minnesota, Dakota, Wisconsin, Northern Indiana, Northern Illinois, and we could have taken in any other territory that we wanted to; they would have given us any part of the country that we might want to incorporate the business in.

Q. During all that time you did as your contract of 1886 required you to do; you kept the name Hall prominently before the public, did you not?

A. Yes, sir.

Q. I have understood you to say that you had their signs out.

A. Yes.

Q. I see from your stationery, also, that you advertised yourselves as agents for Hall's Safe & Lock Company.

A. No, sir, we never did. We never had authority to do that. They never would let us advertise ourselves as agents.

Q. Well, you did by your stationery, did you not?

A. No, sir. If you will read our stationery you will see it says "A. L. Deane & Company, dealers in Hall's safes"; not agents for Hall's's safes—agents for Hall's safes; not Hall Safe & Lock Company, though.

Q. Agents for Hall's safes?

A. Yes, sir. Not Hall's Safe & Lock Company.

Q. I didn't mean to confine myself in my question to asking you whether you advertised yourself as agents for Hall's Safe & Lock Company, but to elicit the fact that you did during all this time keep the name of Hall's safes and Hall's standard safes, and so forth, prominently before the public.

A. Yes.

Q. And advertised yourselves as agents for Hall's safes and Hall's standard safes?

A. Our advertisement was as dealers always.

Q. And not agents?

A. No, sir. The factory were very particular about that. We have letters from them, time and time again cautioning us about using their names as agents.

Q. As agents of the company?

A. Agents of the Hall's Safe & Lock Company.

Q. Agents of the corporation as such?

A. Yes.

Q. You have no letters, have you, telling you not to advertise yourselves as agents for the Hall product?

A. No, sir.

103 Q. You did advertise yourselves as agents for the Hall product, did you not?

A. Yes, I know we did that that was our intention. That is what we were selling.

Q. The product was known during all this period as Hall's safes, was it not, Hall's standard safes?

A. Yes, we sold other safes besides Hall's safes. We were agents for the Cincinnati Safe & Lock Company and agents for the York Company.

Q. During what period?

A. Oh, from 1889—from 1889 we commenced to buy from other people and we would sell them as—

Q. You didn't put the name of any other safe company on your place of business, did you?

A. No, no, y

Q. You didn't put it on your stationery, did you?

A. No, we didn't care about going to the expense. We were well known as A. L. Deane & Company, not as agents for the Hall Safe & Lock Company.

Q. Isn't it a fact that a great deal of mail came to you as "Hall's Safes" or as "Hall's Safe Company"?

A. Very little.

Q. What did you mean yesterday when you said that you really incorporated the Hall Safe & Lock Company of Illinois in order to get your mail?

A. Simply because we had put out a great many bids and we had put out a great deal of advertising all over the country as the agents of Hall's safes, for Hall's safes, and we had spent a great deal of money doing it, and I thought that we were entitled to our mail, not that I was caring about it particularly, but I didn't care about Mr. Pullen getting it.

Q. I infer from that then that at the post office there did come letters addressed to your place of business as the Hall's Safe Company or the Hall's Safe & Lock Company?

A. As Hall's Safe & Lock Company.

Q. And that prior to the formation of your corporation as it now exists in Illinois?

A. Yes, sir.

Q. And it was for the purpose of getting that mail that you say you organized the corporation?

A. More than anything else, yes, sir.

Q. I believe there has been some controversy with the post office authorities on that subject, has there not?

A. Yes, sir.

Q. A considerable controversy, wasn't there?

A. No, not very much.

Q. They knew me as getting the mail there for a good number of years and they thought I was entitled to it, and I —

104 they asked me what I would do about it, and they said that they would still continue to deliver it until the court ordered them to do otherwise.

Q. When did that controversy first arise?

A. I think that was in 1897. I know it was in 1897 when we began to deal with the Hall boys.

Q. And prior to the failure of A. L. Deane & Company?

A. Yes, sir, I think it was.

Q. The people at Cincinnati, representing the interests of the cross-complainants in this case, made some objection to your getting mail thus addressed, did they not?

A. Not to us; to the post office authorities.

Q. To the post office authorities?

A. Yes.

Q. That initiated the controversy, did it not?

A. Certainly.

Q. Did you have any correspondence with the post office authorities upon that subject?

A. No, I don't think I did. I went down and I saw the postmaster myself.

Q. How often did that question arise?

A. Once, I think, only.

Q. I believe it was transferred to Washington, was it not?

A. No, sir, we never heard from Washington at all. They recognized me as the proper person for the Hall mail, when we were A. L. Deane & Company.

Q. Prior to the formation of the corporation?

A. Yes, sir we always got that mail. We have the books back— we are the only ones that know the business in relation to the Hall safes up here, since 1874. Nobody knows anything about this business but us. Nobody today knows anything about it.

Q. You had always been associated with it during that period?

A. Yes, sir, we had made the business for them. We bought it out and it was ours. This territory was ours. We paid for it.

Q. You said something about that sign, large sign, which was upon your place of business, as I understand, at Dearborn Street, and was moved over to 52-54 Wabash avenue?

A. Yes, sir.

Q. That is a sign of a safe, is it not?

A. No, sir, it is "Hall's safes." Used to be "Hall's Safes" on Dearborn Street when we were opposite the First National Bank, and we reduced it a little, it was 48 feet there, and we reduced it to 40 feet, still keeping the letters "Hall's Safes" in that.

Q. Is it that sign you say you got of the Hall's Safe &

105 Lock Company originally, from the Hall's Safe & Lock Company at Cincinnati?

A. Yes, sir.

Q. What did it cost you?

A. I don't know. There was a lot of stuff thrown in in a lump. I don't know what it was.

Q. Don't you know it didn't cost you anything?

A. I couldn't tell you whether it did or not, it shouldn't cost us anything with the amount of money we paid.

Q. Will you say it did cost you anything?

A. I wouldn't say whether it did or not.

Q. You said yesterday you bought it of the Hall's Safe & Lock Company of Cincinnati?

A. Well, we did——

Q. I ask you to state whether or not the Hall Safe & Lock Company did not make if for you and put it up?

A. No, sir, they didn't make it for us, we bought it in the sale of everything. I consider it so. I couldn't swear now whether we paid money or a special price for it, but we got it in the transfer of everything else. We have the same chandeliers there we had then that we bought from them in 1886.

Q. From your long association with the Hall business in this locality you claimed to the postmaster that you were entitled to receive the mail?

A. I told him the circumstances and he gave me the mail. He said if they wanted to get it they could go to the courts about it. That was his opinion, and I did.

Q. When do you say you bought and paid for that sign?

A. In 1886, in February. In looking up the books I find that we paid them $20,000.00 on their first estimate of the new stock, and we afterwards paid them at different times sums amounting up to $42,000.00. That included the second hand safes, the new safes, the fixtures,—letter presses, the drill presses, wagons, horses, and I don't think they were enumerated in the first contract. The first contract was simply to specify certain discounts that we were to be sure of in selling safes to the public. The contract was not made with the understanding that it was to follow year after year, that we were to follow it. We broke the contract within two years and so did the Hall people. They raised the prices on us and we bought goods lower than they charged us there.

Q. I take it that there was an inventory made of the goods which you bought under this contract of January 15, 1886, was there not?

A. Yes, sir, an inventory of the new safes, as I say, and the old safes and the other fixtures I think were all put in a lump. I
106 am not so sure as to that. I remember more particularly about the safes, because I thought we had to pay quite an exorbitant price for them.

Q. You have that inventory yet, have you not?

A. I think we have, yes, sir.

Q. I will ask you to produce it before I conclude my examination.

A. Yes, sir. I was looking for it here some time ago, but I couldn't find it.

Q. I see in this contract of January 15, 1886, the following covenant:

"The said A. L. Deane & Company further agree to faithfully represent the goods manufactured by said Hall's Safe & Lock Company, keeping the name of the latter prominently before the public so the identity of Hall's Safe & Lock Company will not be lost in the business carried on by said A. L. Deane & Company."

You recall that covenant, do you not?

A. Yes, sir.

Q. You intended to faithfully keep it, did you not?

A. Oh, yes, as far as we could. We didn't propose that it should cost us any more money than was necessary. We didn't consider that a sacred thing in the contract at all.

Q. I am not asking you whether you considered it sacred or not. You so covenanted, and I ask you whether you kept faithfully your covenant?

A. Yes, sir, I think we did, as near as we could.

Q. And that continued practically until the time of your failure, did it not, Mr. Donnell?

A. No, sir. That continued up until the Herring-Hall-Marvin Company took control.

Q. You think you ceased then to endeavor to keep this covenant about that time, did you?

A. Well, no. We kept on doing business just the same way. We represented the Hall safes, because they were standard safes and they were pretty well known, but when the Herring-Hall-Marvin Company took hold we were uncertain for two or three years whether we would handle their goods or not, and we kept on year after year.

Q. You kept on handling them, though?

A. Yes, sir. I know, but we could get no contract out of them.

Q. Did you ever write and ask for a contract?

A. No, sir. I find, after my testimony at first, that Mr. Deane did write a letter, but I was not aware of it at all. I never thought that we had a contract and I never considered we had a contract with the Herring-Hall-Marvin company.

Q. To what letter do you refer?

A. To a letter wherein Mr. Pullen wrote Mr. Deane stating
107 that they would continue the contract on the old basis, referring, probably, to the contract made with the Hall Safe & Lock Company.

Q. Referring to this contract of the 15th of January, 1886?

A. Yes, sir.

Q. Then you mean Mr. Deane's letter, in answer to that written two or three days later?

A. Yes, sir.

Q. Being the same letter that is set out in Mr. Pullen's affidavit?

A. I am not positive as to that. I was looking to find other letters, but Mr. Pullen and Mr. Deane had a great many private talks together that I didn't know anything about. They were very friendly.

Q. What you mean by your testimony now, as I understand you, Mr. Donnell, is that you wish to that extent to indicate that your relations with the Hall people, which came to an end when the

Herring-Hall-Marvin Company bought them out, was a mistake to that extent?

A. No, sir; I never considered the Herring-Hall-Marvin Company had a contract with us. I did most of the buying for A. L. Deane & Company and we paid no attention to any certain price or any stipulated figures that the Hall Safe & Lock Company ever made to us. The Herring-Hall-Marvin people continued giving us about the same prices as before.

Q. Well, with reference to that I ask you if it isn't a fact that while the prices varied from time to time they continued to give you the same discount that they agreed that they would give you in their contract of January 15, 1886?

A. Do you mean the Hall Safe & Lock Company?

Q. Yes.

A. The Hall Safe & Lock Company did, yes.

Q. And the Herring-Hall-Marvin Company, after they came into possession of the Hall Safe & Lock Company's property, continued to give you the same discounts, did they not?

A. No, sir.

Q. What discounts did they give you, for instance on single-door, fire-proof safes, numbers 73, 74, 75 and 76?

A. Well, as to that the fire-proof safe didn't make much difference, but it was on the burglar work they raised the prices on us.

Q. They may have raised the price of the burglar work but I am asking you whether or not you didn't continue to get the same discounts of the list price that is provided for by this contract.

A. I think we got larger.

Q. Got larger discounts?

A. Got larger discounts.

Q. And not the same?

A. No, I don't think they are the same. I am not sure as to that.

108 Q. I will ask you to look that up, Mr. Donnell, against further examination on this subject.

A. Yes, sir.

Q. I notice that by this contract of January 15th, 1886, you agreed to occupy and do business in the store in Chicago, Illinois. I understand you did so.

A. Yes, sir. That was 67 Washington street.

Q. That store you first occupied in 1886?

A. Yes, sir.

Q. And when did you move to Dearborn street?

A. We moved—I think it was about a year after that, 1887 or 1888.

Q. And were on Dearborn street how long?

A. We were there until 1890.

Q. And then went to 52 and 54 Wabash avenue?

A. Yes, sir.

Q. Did the Hall Safe & Lock people, when you moved to 52 and 54 Wabash avenue, approve of such removal?

A. No, sir, they didn't think it was wise on our part. They didn't understand the condition of things up here as well as we did.

Q. What objection did they make?

A. They thought we were out of the way, out of the business center.

Q. Did they object to the appearance of the store?

A. No, they never did that.

Q. How did they make their objections to the location, by writing or otherwise?

A. No. It was just simply their opinion. They had no control over where we would rent a store. They couldn't dictate to us about that. Our business had got into such shape that we were perfectly independent of them. We had got into the business here and we could rent a store whenever we felt like it.

Q. That is you thought so?

A. Well, we did; we did it.

Q. I note in this contract that it is provided——

"That the said A. L. Deane & Co. further agree said store is to be subjected to the approval of the party of the first part as to location and appearance."

A. Well, that was when that contract was made out. They didn't want to sell out the branch house up here. They didn't want to let us have this—the boys didn't but Mr. Hall did, and they drew that up in that way I think to keep us from signing it, but as we knew when we got in up here things would change, and we would sell more goods.

Q. You did sign this agreement?

A. Of course, we didn't expect it would last a year. We didn't know whether it would or not. We thought after we got in
109 here, go into the safe business, if we couldn't sell the Hall safes we would sell somebody else's safes.

Q. In that connection the contract provides also:

"The said A. L. Deane & Company further agree and obligate themselves not to represent or sell safes, vaults, fronts, iron or steel work of any kind or character or other articles in this line except those manufactured by Hall's Safe & Lock Company."

How long did you keep that covenant?

A. A very little time.

Q. About how long?

A. I don't think it lasted more than a year. We bought second-hand safes the very minute we commenced up here. That was our object in coming.

Q. When did you buy new work of other companies?

A. Within three years.

Q. You didn't keep new work of other companies in stock in your store, did you?

A. Oh, yes. What year did Mr. Hall die.

Q. I don't know whether it was 1889, 1890. I can tell from my papers.

A. Before Mr. Hall died we bought work from others. He was provoked about it, but we had to make a living and we thought it was for our best interests as well as theirs.

Q. How do you know he was provoked about it?
A. He said that he didn't want us to do it.
Q. Did he write you on the subject?
A. I couldn't say as to that.
Q. I understand that in your branch stores or other agencies you had substantially the same signs that you had here?
A. No, A. L. Deane & Company was up on all our stores.
Q. Hall's Safe & Lock Company's safes?
A. Yes, sir.
Q. I notice in your testimony yesterday you had the name Hall's Safe & Lock Company?
A. No, not Hall Safe & Lock Company. Hall's Safe & Lock Company's safes. That is the way our windows were. I have a photograph of our store both on Dearborn Street and on Washington Street showing how the store was, and also a photograph of our Omaha and Denver stores.
Q. Have you those photographs present?
A. I will get them for you.
Q. Yes, I wish you would. I have noticed on your store at 52-54 Wabash Avenue a sign which has the form of and outlines of a safe?
A. Yes, sir, a sample safe.
Q. What is that made of?
A. That is made of iron.
110 Q. Where was that made?
A. That was made at Cincinnati.
Q. At what time?
A. I think we have had that there about ten or twelve years, about that time. We went into the store there——
Q. Was that new at the time you went into that store, or did you have it over at Dearborn Street?
A. I am not sure whether we had that at Dearborn Street or not. Yes, I think we did.
Q. Did that sign cost you anything?
A. I don't think it did. I think they made us a present of it.
Q. What are the words on that sign?
A. Now?
Q. No, at the time that it was used up to 1898?
A. I couldn't tell you. We have painted it over at least a dozen times. I couldn't tell you, except that it was the Hall Safe & Lock Company's safes, the same as the window. We have always used that lettering.
Q. What are the letters on it now?
A. Hall Safe & Lock Company, Chicago.
Q. Well, you have painted it over and that has only freshened it up?
A. Yes, we painted all our windows and signs all over since we organized the Hall Safe & Lock Company.
Q. That is to make them fresh and new?
A. No—new as near as we could.
Q. Well, did they have the same words?
A. No.

Q. Well, what is the difference?

A. The windows were "Hall's Safe & Lock Company Safes," and the windows now have "Hall's Safe & Lock Company."

Q. And no safes on there?

A. No, sir, just "Hall's Safe & Lock Company."

Q. Now, about this small sign, what has it now on it?

A. Hall Safe & Lock Company.

Q. What did it have on it prior to that time?

A. I think it was "Hall's Safe & Lock Company Safes," or Hall's Safes." I am not sure which. We never could use the name Hall Safe & Lock Company and we never did on our signs.

Q. You only intended to indicate their product there?

A. We intended to indicate that Hall's safes were sold there. That is all we allowed our sub agents to do. We never allowed them to use the name Hall Safe & Lock Company.

111 Q. The business was conducted after the 23rd day of June, 1890, in the same manner so far as signs upon the place of business and stationery and so forth were concerned as it had been subsequent to January 15, 1886?

A. Yes, the signs were not changed much.

Q. The purpose and object as I understand the contract of June 23, 1890, was to provide for the consignment to you of certain goods, was it not?

A. Yes, that was their proposition to us. They would get crowded at the factory and they would let us take the goods on consignment. We got very few of them and sold very few of them.

Q. Were the consigned goods kept here?

A. Yes, sir.

Q. Or did this contract have in view a store at Denver particularly?

A. Well, we treated the matter the same way at Denver as we did here. We had some of their goods on consignment here and some at Denver.

Q. Had you opened a store at Denver prior to this contract of June 23, 1890?

A. Yes, sir, I think we had. I am not sure as to that.

Q. Would the examination of this contract refresh your mind upon that subject?

A. I don't think it would.

Q. About the middle of the page.

(Witness examining said contract.)

A. Well, I think this contract was made at the suggestion of Mr. Deane. We had had sub-agents at Denver and they didn't seem to do very well and we had a great deal of money tied up in our contracts and agencies at Milwaukee and Omaha and we didn't care about stocking up the Denver house and Mr. Deane asked them if they would put some goods out there on consignment, which they complied with, and they did, but we had other goods of our own out there more numerous than the consigned stuff was. I don't think that our consigned stock amounted to $2,000.00, that we got from the factory.

Q. You had maintained a store at Denver prior to the date of this contract?

A. I think we had just opened up or we had bought out some stock there. We didn't have a big store. We just had a little stock that we took from our sub-agents, Cole & Company. I forget those dates. That is the reason for that contract for consigned goods.

Q. Did you, prior to 1898, advertise the goods which you were engaged in selling?

A. Yes, sir.

Q. In the daily press in this and other cities in your territory?

A. Yes, sir. We advertised "A. L. Deane & Company,
112 Agents for the Hall's Safes," and also agents for various other goods that were sold, such as bicycles, steel office furniture and steel office fixtures.

—. Didn't you advertise yourself as agents for safes manufactured by any other person than the Hall's Safe & Lock Company?

A. No, sir, we didn't advertise ourselves as agents for the Hall's Safe & Lock Company nor for anything.

Q. Did you advertise yourselves as dealing in safes manufactured by any other company than the Hall Safe & Lock Company prior to 1898?

A. I couldn't say as to that.

Q. I would ask you to look up your advertisements if you will and advise me before I conclude this cross-examination?

A. Yes, sir.

Q. Were you an extensive advertiser during those periods?

A. No, we did our business with our agents. We worked. We advertised but very little. We spent our money on railroad fares and paying our men good salaries.

Q. Did you have your agents out on a commission basis or on a salary basis?

A. A salary basis. We never put our agents on a commission basis. That was the difference between Mr. Hall and myself. He wanted a man on a commission and I didn't, and I proved to him, and he found it was more successful to give them a salary.

Q. Well, I infer from your long connection with the sale of a safe product, having the name of Hall, that you felt and realized that the name of Hall had a great reputation and was valuable, did you not?

A. I didn't value it as anything. I valued the work that they turned out for us more than anything else.

Q. When did you begin to value the name of Hall or think it very valuable?

A. I never did think it very valuable. I think it is the most detrimental name a man can use in the business today.

Q. Well, their product was known as having great value and had acquired a great reputation, had it not?

A. No greater value than any other. It was simply on a line with other competition. Their dovetailed safes and cone bolts had given them prestige over their competitors, and when they abandoned

that they put themselves on an equality with all other safe manufacturers.

Q. The fact is the Hall product during all this period that you were dealers in it and prior to 1898 enjoyed a great reputation, did it not?

A. No better than any of the other safes.

113 Q. And it had a great reputation by reason of the name of the manufacturer, Hall, didn't it?

A. No, sir.

Q. I would ask you what you mean in your original bill filed in this case in which you say, "that said safes so manufactured and dealt in by your orators aforesaid also enjoy a very high reputation by reason of the name of the manufacturer thereof."

Mr. MERRICK: I object to the question as being incompetent and immaterial. Go ahead and answer, Mr. Donnell.

(The question was read by the reporter.)

A. That refers to the vault linings and vault work more than anything else, as they are differently constructed from any other safe manufactured and afford more security than any other safe manufactured.

Q. Have you any further explanation than you have given?

A. That is about all, I should judge.

Q. If there is anything more I wish you would put it upon record.

A. That is about all I have to say.

Q. I will call your attention to this averment contained in the bill filed by you:

"That said safes are recognized throughout the business world, and particularly by bankers, merchants and the commercial public by reason of the name 'Hall' and 'the Hall's Safe Company' being conspicuously placed on said safes as an evidence or token of the manufacture thereof."

What do you say as to the word "Hall" having a great value by reason of its long association with safes and safe materials in view of this averment contained in your bill?

A. Well, the Hall people who we represented were men well known in the safe trade as good safe makers. They are men who can get the best of help and the most experienced help, better than any other factory that I know of, and they turn out the best class of work than anybody that I know of.

Q. The word "Hall" then you wish to be now understood as asserting has no commercial value by reason of its long association with this trade apart from the men themselves who are now in the Hall's Safe Company of Cincinnati, is that your meaning?

A. It has no value in my estimation, unless it was equitably kept up by the same people that are keeping it up now and making the work in the manner that they are making it.

Q. Will you explain why you brought a bill in this case against the Herring-Hall-Marvin Company?

114 Mr. MERRICK: I object to that as incompetent and immaterial.

A. Simply because they came up here—they never had any business relations with this market, and as I understood it had no connection and no right to use the name "Hall Safe & Lock Company."

Q. If the word "Hall" or "Hall safes" or "Hall's standard safes" had no commercial value in this locality why did you expend money in attempting to secure the right to use it exclusively?

A. Simply because I thought it was an imposition on myself, as they did try to banish the name from public dealings and notified me to get rid of the name of Hall Safe & Lock Company, and it made me hot to have them come back here and undertake to get my business that I had sustained for so many years.

Q. Well, I understand you now to say, Mr. Donnell, that the word "Hall" or "Hall's Safes" or "Hall's Standard Safes" does not help you to get business?

A. No, sir.

Q. That it depends entirely on the product?

A. Yes, sir.

Q. That is right?

A. Certainly.

Q. Then why should you want to use the name "Hall" "Hall's Safes" or "Hall's Standard Safes"?

A. Simply because I took it as a corporate name, more as I said, to get my mail than anything else, and I think I made a mistake. If I had organized a Donnell Safe & Lock Company I think I would have done a great deal better.

Q. Well, why don't you just abandon the use of the name and change the name?

A. Simply because I don't have to.

Q. I will ask you what you mean, in view of your last answer, by the following language from the fourth paragraph of your original bill filed in this case. You say:

—"has now the exclusive right to maintain an office and store room in the said City of Chicago for the sale of said Hall's safes, safe vaults, and deposit vaults manufactured by the said Hall's Safe Company of Cincinnati, Ohio, and that such exclusive right as aforesaid is of great advantage to and source of great profit to your orator." Was that a mistake?

A. No, sir, we are established under that name and if we were to have any other one here it would mix people up, it would confuse the public where the public has never been confused before.

Q. Then the name is of some value to you?

A. Yes, a little, as I say, it is not much.

115 Q. Why didn't you say it was of a little value to you in your original bill instead of saying "is of great advantage to and source of great profit to your orator"?

A. My attorney drew up that bill.

Q. This bill is sworn to by you, Mr. Donnell?

A. Yes, sir.

Q. And I would thank you to advise me why you said that the use of this name "is of great advantage to and source of great profit to your orator"?

Mr. MERRICK: Objected to as incompetent, immaterial, having been already fully answered. Answer Mr. Donnell.

Q. Well, we were established under this name, and in fact we have advertised more than we ever had the name Hall Safe & Lock Company; we are well known, and while the—I don't think anybody could say that it is of great profit to them with any degree of certainty at all, it may be and may not; I can't tell, but as we have been established under that name and commenced to do business under that name and been successful, why that was my idea more than anything else in signing a thing of that kind. At the time I signed I supposed and thought that it was the same as I signed, but since this suit has come up and I have been amongst my friends, I think I could have used my own name to better advantage than the name Hall's.

Q. You are disposed then to think that the assertion that this name is of great advantage to you and a "source of great profit to your orator," is a mistake?

A. I didn't think so when I signed it.

Q. But you do now?

A. Not a great mistake.

Q. But a mistake then?

A. I think it is a name that will give me some little advantage. The profits are not as great as anybody would think they would be, because I think I am just as well known as they are and everybody knows what the concern *it*; that it is an Illinois corporation

Q. You say that you have advertised more than you have before; what do you mean by that?

A. Why, we have advertised the corporation of Hall's Safe & Lock Company more than we ever did the Hall's safe.

Q. How much more?

A. Five or six times more.

Q. When did you begin to do that?

A. Shortly after we were organized.

Q. And continued it ever since, haven't you?

A. Yes, up to date, although up to within the past eight
116 months we have pulled in our horns on account of the presidential election.

Q. You have advertised less within the last eight months as I understand you that you did before that time?

A. Yes, sir.

Q. Have your advertisements been of the same character from the first?

A. Oh, no, they run differently in different places. There is a difference in different places.

Q. Have they been about the same in the Chicago press formerly as they have been within the last six months?

A. Yes—no, not formerly. We were compelled as we do in the Chicago press on account of the competition that we have by the Herring-Hall-Marvin Company coming up. From the way they talk you would think we have no right to be in existence at all; that

the Hall people are all bankrupt and dead and never did know how to make safes.

Q. In the sixth paragraph of your bill you state:

"Your orator further represents that by reason of its name, trade mark, trade name, signs, advertisements and reputation as a dealer in safes so manufactured as aforesaid * * * "it has acquired and enjoyed a high reputation as a dealer in first class safes and safe material," What name do you refer to there in that averment?

A. The name Hall Safe & Lock Company.

Q. What trade mark do you refer to there?

A. The Hall Safe & Lock Company.

Q. Trade name?

A. The Hall Safe & Lock Company is their trade name.

Mr. MERRICK: Is "trade mark" used there?

Mr. ALDRICH: Yes, "trade mark."

Q. Signs—what signs do you refer to?

A. Do you mean signs that we have?

Mr. MERRICK: He asks you what you mean in that bill.

The WITNESS: Oh, the signs of the Hall Safe & Lock Company.

Q. As they are used and displayed by you in your business at 52-54 Wabash Avenue, is that right?

A. You are speaking about my objection to the sign of the Herring-Hall-Marvin Company?

Q. No.

A. Well, I got confused.

Q. Take that and read it. (Handing copy of said bill of complaint to the witness.) It is the sixth paragraph there.

(The following questions were read: "Signs—what signs do you refer to"—"As they are used and displayed by you in your
117 business at 52-54 Wabash Avenue, is that right"?)

A. The signs of the Hall Safe & Lock Company.

Q. You mean the signs that you have on your place of business there, do you not?

A. Yes, sir.

Q. The fact that this business has been conducted by the Halls from 1854 or thereabouts has tended to make the name Hall very prominent in connection with this trade, has it not?

A. Yes, very well known.

Q. That was true in 1898, was it not?

A. No, sir, not so true in 1898. They had a very black eye on account of their old safes being robbed all over the country. They were about as low as any reputation in safes could get. They had so many of them out and there were so many burglaries of the Hall safes that it hurt them.

Q. But the name Hall had been known, as I understand it, in connection with this trade, from 1854 up to 1898?

A. Yes, sir, up till 1892.

Q. Well, as I understand it from your statement yesterday the name Hall was kept in the corporate name of the combined safe companies, was it not?

A. Yes, just Hall.

Q. Yes, just Hall's?

A. The Hall Safe & Lock Company had dropped it then, and as I supposed forever.

Q. I believe that you exhibited some letter headings received from these people after that transfer had been made?

A. Yes, sir.

Q. In which there was a picture of the factory?

A. Yes, sir.

Q. Well, I notice on that factory, according to that picture, there are a number of signs of the Hall Safe & Lock Company?

A. Yes, sir, Herring-Hall-Marvin Company is on the signs, not Hall Safe & Lock Company.

Q. There are three or four Hall Safe & Lock Company signs on the factory?

A. That was on a building that didn't belong to them. That wasn't their factory at all.

Q. It is on the picture?

A. Yes, sir. I noticed it the other day for the first time.

Q. It is on the picture?

A. Yes, but not on the factory.

Q. What building was it on?

A. It was on a pump factory, across the street from their factory. That was not their factory at all.

Q. They were using it, weren't they?

A. No, sir. Their buildings was four doors above that building, but they lettered up all the buildings on their letter heads,
118 but their buildings were not lettered. They never occupied that building but they put the name Hall Safe & Lock Company on the building.

Q. Well, they kept it on their letter heads and in these pictures after the Herring-Hall-Marvin combination was made?

A. No, sir, I never saw it. I never noticed it.

Q. Well, you produced letters yesterday that had the name on, as I have stated it.

A. That wasn't on their factory but it was on a building—I didn't know that until my attention was called to it.

Q. You know it now, from the letters which you produced yesterday, do you not?

A. Yes, sir.

Q. Up to about what time did the name Hall in connection with this trade have and enjoy a high reputation in the safe business?

A. Up to the consolidation with the Herring-Hall-Marvin Company.

Q. Then these numerous burglaries took place after the consolidation?

A. They took place two or three years previous to the consolidation but it had not become known to the public. There were burglaries all over this part of the country and it hurt us very severely. We had to change our construction entirely and the Herring-Hall-Marvin people changed their construction after they had organized from the dovetailed to the screw construction.

Q. Did that make it more burglar proof or less so?

A. They made heavier construction, made it more burglar proof.

Q. Made it more burglar proof?

A. Yes, sir, or just as burglar proof.

Q. The name Hall has now the highest kind of a reputation in the trade, has it not?

A. Not for burglar proof work, no sir.

Q. Well, in the general safe business?

A. It has a good reputation. In the fire proof safes the Hall boys have; so have the Herring-Hall-Marvin Company; so have the Diebold Company and the Mosler Company and the McNeale & Auburn Company—they all have reputations.

Q. The name Hall hasn't a higher reputation than any of the rest of them?

A. No, it hasn't a higher reputation than the rest of them; simply the manner of conducting the business.

Q. If I understood your testimony aright then, the fact that this name has been used in connection with the safe trade for fifty or more years doesn't give it any advantage over a new institution that has just started?

119 A. No, sir. The Mosler went away ahead of them in business in the past 15 years on account of the way they pushed it, and they had no reputation at all, now they have a bigger reputation than any of them. They have a bigger reputation than any of them. It is simply the manner of pushing the business. They don't make any better safe.

Q. Now, in view of this statement you have just made upon the record I would ask you to explain the statement made by you under oath in your original bill, in the seventh paragraph of said bill as follows:

"Your orator further represents that Hall's safes were first manufactured by Joseph L. Hall at or near Cincinnati, Ohio, on or about the year 1854, and that since that time the said Joseph L. Hall, or his sons, either individually or as managers of corporations in which the personal or family name of Hall appeared, have been engaged in the manufacture of safes, and the name Hall has by reason of such long business experience acquired and now enjoys the highest reputation in the safe business; that safes so manufactured and labelled *and* are known to the public as safes of the highest type of construction, durability, efficiency and character for the purposes for which safes are manufactured, to wit, the preservation from fire and theft of money and personal property of great value"

Now, which is the correct statement of the situation, Mr. Donnell, the one that you have made today, or the one contained in your original bill?

A. They enjoy a great reputation, but no greater reputation than any of the rest of them. They are all on an equality and it is simply the pushing of the business that gets it.

Q. Are you a manufacturer of safes and safe material?

A. Yes, sir, we manufacture vaults,

Q. Where do you do your manufacturing?

A. 52-54 Wabash Avenue and 56-58 Michigan Avenue, and then we have quite a number of linings made outside when we get crowded. Almost anybody can make them.

Q. How many men do you employ?

A. At the present date we employ about forty men.

Q. At the date of the filing of this bill how many men did you employ?

A. About twenty—I think twenty-five men. Today we have about forty men.

Q. Are these men all engaged in the manufacture or does this include the agents also?

A. No, the agents are not included.

120 Q. How many men do the Hall's Safe & Lock Company at Cincinnati employ, about how many?

A. I couldn't say, about three or four hundred I should judge.

Q. How many men do the Herring-Hall-Marvin people employ, if you know?

A. I couldn't say as to that. I should judge about the same number, if not more. Where it takes ten of their men to make a vault, one of our men can do the same amount of work.

Q. At page 2710 of the Chicago Business Directory for the year 1903 I find the following: "Hall's Safe & Lock Company, largest manufacturers of safes, vaults &c. in the world. 52-54 Wabash Avenue. Telephone Central 4517." What have you to say of that advertisement, Mr. Donnell?

A. Well, all safe men put up advertisements of that kind, the Herring-Hall-Marvin Company do the same.

Q. Were you the largest manufacturer of safes in the world?

A. No, nor were they. They have the same advertisement.

Q. That is your opinion; that they are not?

A. I know it.

Q. Who is larger than they?

A. The Mosler is larger.

Q. Where are they located?

A. Hamilton, Ohio. That is an advertisement that we have had for a good many years, and was duplicated by my son and he gave it to them, last year just the same way. Had I been there I wouldn't have inserted it.

Q. For how many years?

A. I couldn't say as to that. It went in off and on, we used to advertise the Hall Safe & Lock Company the same way, the old Hall Safe & Lock Company.

Q. Yes, I know you did. When A. L. Deane & Co. were dealing in their safes here you advertised it the same way, didn't you?

A. Once in a while, yes, sir.

Q. Now, isn't it a fact that after you formed the Illinois corporation, the Hall Safe & Lock Company, you caused that advertisement to be inserted?

A. Yes, sir.

Q. And you did it straight along, didn't you, from 1898 on?

A. No, sir.

Q. What years did you omit it?

A. 1899, 1900—I don't think we ever put it in before but twice. I think that was all that it was put in.

Q. Do you feel sure of that?

A. Yes, sir, I am positive.

Q. Well, Mr. Pullen says that they employ between five and six hundred men constantly and have an average weekly payroll of more than $8,000.00. Do you say that Mosler employs more than that?

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A. That is my understanding that the trade—among the safe men that worked in the factory—I get my information from them. Mr. Pullen's statement as to the number of men that they employ—he has more knowledge of it than I have.

Q. I notice that in your advertisements in the daily press of Chicago you have display type and the advertisement reads as follows: "Caution"—that word in large type—"The only safes made by the Halls are sold in Chicago at the old stand, 52-54 Wabash Avenue. Beware of imitations."

Signed, Hall's Safe & Lock Company. Why do you use that word "Caution," Mr. Donnell?

A. Because our competitors tell people that the Hall people are not making safes any more; that they sold out to the trusts.

Q. What competitors tell that?

A. Well, most all of them.

Q. Well, name one of them.

A. The Diebold Safe & Lock Company; Trumbull Safe & Lock Company; Herring-Hall-Marvin Company—I don't know as Herring-Hall-Marvin Company make that statement but they say they make the only Hall safes that are made, and that advertisement as it reads is the truth.

Q. The only safe made by the Halls—you refer to the present Hall boys?

A. Yes, sir.

Q. The same people who were originally in the Hall Safe & Lock Company that sold out to the Herring-Hall-Marvin Company?

A. Yes, sir, the only Halls that are making safes.

Q. What do you mean by "at the old stand?"

A. The old stand 52-54 Wabash Avenue.

Q. Well, that isn't all of it. It says, "Hall Safe & Lock Company"—what old stand is that?

A. 52-54 Wabash Avenue.

Q. Well, old stand for what?

A. For the sale of safes.

Q. For the sale of what kind of safes?

A. Hall safes.

Q. What do you mean by advising the public to beware of imitations? Whose imitations?

A. Imitations of the Hall safes.

Q. Well, whose imitations?

A. The Hall boys. They make a better safe in my estimation than is made by some of our competitors.

Q. But you are not advising the public to beware of the Hall boys' safes?

A. No, sir.

Q. Well, whose safes are you telling the public to beware of?

A. To beware of other safes.

122 Q. Well, "other safes"—Mosler safes, Diebold safes and so forth are not imitations of the Hall safe are they?

A. Well, somewhat.

Q. Now, isn't it a fact, Mr. Donnell, that you mean by that to beware of the safe made by Herring-Hall-Marvin Company and sold as the Hall safe?

A. No, sir.

Q. Isn't it?

A. No, sir.

Q. Isn't it a fact that the only other safe besides the Hall boys of Cincinnati known as the Hall safe is made by the Herring-Hall-Marvin Company?

A. The Herring-Hall-Marvin safes are not known as the Hall safes at all.

Q. I thought I heard you say a moment ago that they were advertising that they made the Hall safe and the others were imitators of it.

A. I don't think I made that statement.

Q. Well, it is a fact, isn't it, that they are advertising Hall safes at the corner of Dearborn and Randolph Streets?

A. I never heard so. Their signs read that they are, but their safes are not lettered as Hall safes.

Q. Well, they do, by their signs and advertisements, so advertise, don't they?

A. Yes, sir.

Q. How long have they done that?

A. Since they came to Chicago in June.

Q. Didn't they do it before that?

A. Not that I know of.

Q. I understood you to say earlier this afternoon that you didn't advertise yourself or engrave upon your stationery the statement that you were agents for Hall's safes?

A. No, I said that is what we put on. We were agents for all's safes.

Mr. MERRICK: The company, he said.

The WITNESS: The Hall Safe & Lock Company.

Q. I show you a letter dated December 28, 1897, and call your attention to the printing at the top thereof; also April 1, 1898; March 7, 1898; April 4, 1898—I am not sure but that is April 2, 1898—it doesn't make any difference—April 9, 1898; April 11, 1898, and I will ask you whether or not those do not correctly set forth the style used by you in the conduct of the business during the period I have named?

A. Yes, sir; those are our letter-heads.

Mr. ALDRICH: I will cut off the top of the first one, the others being identical, and offer it in evidence as defendants' exhibit 1.

(The said letterhead was thereupon marked defendants' exhibit 1 and is as follows:)

123 (Here follows Def'ts' Ex. 1, withdrawn by leave of Court June 12, 1905, and not reproduced here.)

Q. Now, the fact is that that is the style used by you upon your stationery from some time in 1890 clear through to 1898, is it not?

A. About 1886, I guess.

Q. For 12 years?

A. Yes, sir.

Q. And it was used as well in 1892 as before that time?

A. Yes, sir.

Q. And after 1892 you had some checks printed, did you not?

A. Yes, sir.

Q. Referring to your checks upon your bank?

A. Yes, sir.

Q. Have you a copy of one of those checks now with you?

A. I couldn't say that we have at all. I went through the vault for those old A. L. Deane & Company papers and there was a lot of them missing.

Q. We had one before us at the time of the hearing before Mr. Reid, you will recall?

A. I didn't see it.

Mr. MERRICK: We didn't introduce it.

Q. It was a check given to Mr. Trumbull that was not paid, at or about the time of the failure. Have you any recollection about how those checks were printed, Mr. Donnell?

A. No, I have not. I think they were about the same as the letter-heads, though.

Q. Now, you continued to use those letterheads and those checks, did you not, until the date of the failure of A. L. Deane & Company?

A. Yes, sir.

Q. You used them generally, did you not, with all persons with whom you had business as well as with the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. If, after 1889, you were also acting as agents for other safe manufacturers why did you not put their names upon your stationery and upon your checks?

Mr. MERRICK: Objected to as incompetent and immaterial.

A. We simply bought the safes and there was no need of changing our letterheads every time we bought safes from somebody else. We didn't think it was necessary.

Q. Is there not a larger and better reason, Mr. Donnell, found in the fact that your business was substantially all for the Hall's safes?

A. Well, not particularly so, but I think that is the main reason. We were selling the Hall's goods more than anybody else's.

Q. The goods of other manufacturers was an incident rather than your principal business, was it not?

A. Towards the last it got to be a pretty big trade; after
124 1890—well, in 1889, I may say, we bought a great deal of safes for the express companies. We couldn't meet competition with their specifications and we had to meet it elsewhere. We had about fifty (50) safes from Cin-n-ti Safe & Lock Co., and things of that kind, of the makers, for the United States Express Company and other large institutions. They didn't care who made the safes as long as they complied with their requirements.

Q. At what time did A. L. Deane & Company fail?

A. In January, 1898, or February.

Q. You had a controversy with the Herring-Hall-Marvin Company, or the receivers, at that time, did you not?

A. No, sir, not that I know of, or not that I remember.

Q. To refresh your recollection I will call your attention to a transaction that my office had with you with reference to the payment for consigned goods?

A. Yes, sir.

Q. You admit that there was a controversy at that time?

A. Yes, sir.

Q. Some considerable feeling grew out of that, did there not?

A. No, not so far as I was concerned. I thought they took unbusinesslike methods to make their collections.

Q. Well, there was some feeling incident to the unbusinesslike methods that you thought they adopted, was there not?

A. They had their way of making the collections. It was something I wouldn't have done.

Q. You resented the way adopted, did you not?

A. Yes, sir. So would anybody. They talked about preferring criminal charges against us when we had an open account. They knew that their charges wouldn't stand.

Q. Well, there was talk of that kind, was there not?

A. Yes, sir.

Q. You naturally resented that, didn't you?

A. I had no special feeling about it.

Q. Do you mean that people can make threats of that kind against you and not cause any feeling on your part?

A. I didn't think it was necessary to get up any feeling. I am a man that doesn't have feeling of that kind. I consider that people that will do that are not worth while getting provoked at. Mr. Pullen wrote me a letter stating that he understood I had some feeling and he put it in such a way—it came from the source—I never answered the letter at all. I didn't say anything to anybody about it outside of somebody in your office.

Q. I believe Mr. McKnight in my office had charge of it?

A. Yes, I believe it was Mr. McKnight. He was hard
125 pressed for money at that time and the demand was made on us when we were not able to pay it.

Mr. MERRICK: Let me interrupt a moment. It was all paid, was it not?

The WITNESS: Every cent of it.

Mr. MERRICK: And you resumed doing business after that?

The WITNESS: No, not after that.

Mr. MERRICK: You did no business with them?

The WITNESS: No, not after that.

Q. You organized the present Illinois corporation soon after that, didn't you?

A. Two or three months after that.

Q. And I believe I see from the papers before me that a settlement was reached after the organization of the corporation?

A. I have forgotten whether it was or not. We would have made a settlement with them at that time if we had had the money, and they knew it, too.

Q. I see that I caused the action against you to be dismissed under date of October 18th, 1898.

A. Yes, sir.

Q. That is right, isn't it?

A. I don't know. I didn't know that they ever took any action.

Mr. MERRICK: I don't think any action ever grew out of it, Mr. Aldrich.

The WITNESS: I don't think I ever was served with summons.

Mr. ALDRICH: Yes, we brought suit. Here is the receipt for the sheriff's custodian's fees.

The WITNESS: Was the sheriff in possession of our place there?

Mr. ALDRICH: Yes, we had a custodian in possession.

Mr. MERRICK: The Metropolitan National Bank were in possession, but I don't think it makes any difference in this controversy. It is not germane to anything in this controversy.

Q. Now, Mr. Donnell, what damage was done you by the Herring-Hall-Marvin Company putting up the signs at the corner of Lake and Dearborn streets?

A. Well, it made people think that we had moved to a new location. They went in there inquiring for us and as they went in there they, from what I understand, began to defame us and our business and our business relations and everything else. Several people have gone in there and have wanted to know where our different men were, and they went in for business purposes. I can't tell exactly the amount of damage it did. It hurt my personal reputation.

126 Q. Well, did it tend to lead to confusion as to the product known as Hall's safes or Hall's standard safes or anything of that kind?

A. We didn't care about that so much as we did the language that they used when people would go in there as to our business methods. We don't care for the confusion. They can't confuse anybody. The more they talk the better it is for us.

Q. You don't think, then, that the buyers of Hall's safes, the people who are seeking to buy Hall's safes, are confused at all by the two stores being in the city of Chicago and in close proximity to each other and having these signs thereon?

A. They think it is our place. They think that I am there and that my men are there, and when the people come in there they

begin telling them about us and about the Hall boys and the product that we represent.

Q. You don't quite answer the question. My question is designed to elicit from you the fact whether confusion results by the use of the same name by both of them?

A. No, sir; that don't affect us at all, as we have never connected ourselves with them in any shape or form since we have been a corporation.

Q. Well, in view of that answer I will ask you what you mean by the averments found in the 18th paragraph of your bill, sworn to by you, in which you saw:

"Your orator further represents that the placing of such signs and the proposed advertisements as aforesaid was and is not only calculated to deceive, but was intended by said defendant to deceive the public, and particularly prospective buyers of safes and safe materials into believing that the said defendant is the duly authorized agent and dealer in safes manufactured by the Hall Safe & Lock Company and safes having the characteristics of safes manufactured by the Halls, whose reputation as safe dealers carry with it on all safes manufactured by them the business understanding that such safes are of the type and quality of safes manufactured by the original inventor of such safes and his successors in such business, to the great injury and irreparable damage of your orator in the premises."

A. Well, we have been established here since 1898 in the business and have used the name of the Hall Safe & Lock Company——

Q. You have been established here in the business of handling Hall's safes since 1886, haven't you?

A. I had but very little to do with the Hall Safe & Lock
127 Company as far as a stockholder was concerned. I had a half interest with A. L. Deane in the conduct of the business of the Hall Safe & Lock Company for other people, not for my own personal benefit.

Q. My question is, you have been in business and dealing in Hall's safes, as I understand your testimony, since 1886?

A. Yes, sir, the Hall Safe & Lock Company have.

Q. No, but you had?

A. Yes, sir.

Q. A. L. Deane & Company?

A. Yes, sir.

Whereupon the further taking of testimony herein was continued until 2 o'clock, P. M., November 9th, 1904.

WEDNESDAY, *November 9th*, 1904—2 o'clock p. m.

Continuation pursuant to adjournment.

Present: Mr. Merrick, Mr. Aldrich.

The cross-examination of the witness JAMES W. DONNELL, was resumed by Mr. Aldrich as follows:

Q. Mr. Donnell, did you find the inventory which I asked you to look up yesterday?

A. No, I don't think I have that, but I have the photographs I was looking for this morning and I put them away somewhere. Where it was I don't know, as to the storage. But for the inventory, I ransacked the vaults all the way through for an hour and I couldn't find that. At one time they had a cleaning out there and I presume it was taken with the papers and boxed up. I will make another search, though, and if I have got it I will present it.

Mr. ALDRICH: I wish you would, and also the photographs.

The WITNESS: I have the photographs.

Mr. ALDRICH: You haven't them with you?

The WITNESS: No, sir; I didn't have much time to look for them. I thought they were on my desk, but they were not. I went all over my desk.

Q. Did you find anything that would enable you to say whether the iron safe that you use as a sign was paid for by you or was furnished by the Hall Safe & Lock Company of Cincinnati without cost to you?

A. I couldn't say, no, sir.

Q. Well, I believe you did state that in your opinion that
128 was furnished without cost, but that the large sign was charged to you in some way; is that right?

A. The large sign was put in in our original inventory, and the safe that we had—well, we have had a half a dozen safes in front of the store. The one that we have now, I don't know whether it was made by the Hall boys or the Herring-Hall-Marvin Company.

Q. You stated that that sign, in the form of a safe, was the same one that you had on Dearborn street; is that an error?

A. I said I thought it was. I wasn't positive.

Q. You still think it is, do you not?

A. Yes, sir. I can tell when I get those photographs, though.

Q. How many years had you been in Chicago——

A. Twenty-four years.

Q. —As dealers in or agents for Hall's safes or Hall's standard safes?

A. Since 1886.

Q. At the time you organized the Illinois corporation known as the Hall Safe & Lock Company was the Herring-Hall-Marvin Company in the hands of a receiver?

A. I don't remember.

Q. What is your best recollection on the subject?

A. That was in 1898. We had no business with them and I couldn't tell whether they were in the hands of a receiver or not.

Q. What do you mean by saying you had no business with them?

A. We had no dealings with them; we bought no safes from them when we organized the Hall Safe & Lock Company.

Q. I understand that you organized in February, 1898?

A. I think that was—we didn't commence business until May, I think it was.

Q. Have you your incorporation papers?

Mr. MERRICK: I have the papers. I will show the whole thing.

The WITNESS: I am not sure whether that was May or June. Well, now, I can answer that question, Mr. Aldrich. They were in the hands of a receiver when we organized, because I remember about the notes.

(Mr. Merick produces articles of incorporation and hands same to counsel.)

Q. Your counsel has produced here the articles of incorporation of the Hall Safe & Lock Company of Illinois as recorded on the ninth day of May, 1898, at 11 o'clock, A. M. I see by an ex-
129 amination of these articles that you filed your statement for organization on the 22nd day of February, 1898; that you held your meeting of the subscribers on the 7th of March, 1898, and recorded your articles on the day I have named. In view of these facts what have you to say as to whether or not you were doing business with the Herring-Hall-Marvin people in February, 1898?

A. We didn't do business under the name of the Hall Safe & Lock Company until our organization was completed in May. Our letterheads and all were printed and sent out after our organization was completed.

Q. And from February up to the completion of the organization of the company you continued to use the same letterheads?

A. A. L. Deane & Company, yes, sir.

Q. That have been introduced in evidence here?

A. Yes, sir, that is my recollection.

Q. You also continued to have business dealings with the Herring-Hall-Marvin Company, or its receivers, did you not?

A. Yes, we wound up our old business with the receivers, things that had been ordered four or five months before, and those orders were being shipped all the time.

Q. That was so after A. L. Deane & Company were in the hands of receivers?

A. Yes, that work was finished up while we were in the hands of receivers. It was ordered before we went into the hands of receivers; was ordered before the Herring-Hall-Marvin Company went into the hands of receivers.

Q. Now, why did you adopt the name "Hall Safe & Lock Company" for your corporate name?

A. Simply because we had been doing business here for a great number of years and I was well known as the representative of the Hall goods; I was well known as being connected with the Hall people, and I thought that as the Hall Safe & Lock Company had abandoned their charter at Cincinnati and gone out of business and practically abandoned the name, as I thought and was led to believe by them, that I had a perfect right to do it. That was virtually my reason for doing it.

Q. Now, isn't a fact, Mr. Donnell, that having been connected with Hall's Safes and the Hall product for so many years, that you felt you were entitled to retain to yourself the good will and trade which you had thus built up and with which you had been connected for so many years?

A. Yes, sir, that was my opinion to a great extent.

130 Q. And one of the reasons that led you to adopt the name Hall Safe & Lock Company was to aid in retaining to yourself that good will and trade, was it not?

A. Well, to a certain extent. The trade don't amount to very much. It is simply the future trade that comes on, that you make up; but that was my principal reason, yes, sir.

Q. And you have stated, also, in addition to that reason the fact that you had mail coming in that name which you wanted to get?

A. Yes, sir, there was mail coming in that name that belonged to us. We had been in the business for years and had the record of the whole business.

Q. I take it, too, that you had some doubt or uncertainty as to what would be the future of the Herring-Hall-Marvin property and assets?

A. Well, of course, I wasn't a judge of it and didn't know anything about their finances, but I understood that they kept writing us letters that they were going to start up all the time and commence business.

Q. You knew that they were in financial distress from the fact that they had receivers in charge?

A. Yes, sir. We were losing money ourselves before the receivers were put in. Everybody was losing money from 1893 to 1897. We would send them our paper and they would use it. Our credit was good.

Q. From 1898 up to the time the Herring-Hall-Marvin Company opened the store at the corner of Dearborn and Randolph street mentioned in your original bill, who sold the product of that factory in this city?

A. I don't know as anybody did. Trumbull sold some and Strauss sold some. Those are the only two that I have heard of. They sold a very little here except a few deposit boxes to the Illinois Trust Company.

Q. They did some important work in the banks of this city, did they not?

A. Very little, sir, very little, in comparison with what work was done; practically nothing in comparison with what work was done or what work we had done for them previous to our giving up selling their safes.

Q. Who advertised Hall's safes for sale here during that period?

A. We did.

Mr. MERRICK: What period is that, Mr. Aldrich?

Mr. ALDRICH: 1898 up to the time of the opening of this store.

A. We did. We had canvassers over town every day.

Mr. MERRICK: Whose business, the Herring-Hall-Marvin Company's business?

131 The WITNESS: No, Hall's safes.

Q. Who advertised the Herring-Hall-Marvin Company's safes during that period?

A. I never saw them advertised.

Q. Don't you know that Mr. Trumbull did?

A. No, sir, I never saw any advertisement Mr. Trumbull put in. This is the first time I ever heard of it. Mr. Trumbull, I don't think, sold—from what I know, from what knowledge I have of the business I don't think he sold $5,000 worth of stuff for them.

Q. Who put in the work at the new Chicago National Bank?

A. That was put in by a Philadelphia concern, Remington-Sherwin Company.

Q. Who manufactured the material that went into that?

A. I couldn't say just now.

Q. Don't you know that the Herring-Hall-Marvin Company did?

A. I knew that they were in the trust and made work for one another. I couldn't say at the present time if they did. This is the first knowledge I have of it.

Q. That was a very large job, was it not?

A. Yes, quite a large job, but they didn't sell it, and they are not known here. I don't think they are known to-day in the work.

Q. Who put in the work in the new Illinois Trust & Savings bank?

A. I sold that to them myself. The Herring-Hall-Marvin Company built it. That is one of our jobs. They paid me only $2,000 commission on that sale.

Q. I believe it was claimed that it was too large for your means and they arranged it by commission?

A. Yes; we often turned orders over in that way to them. If we didn't want to handle them we made a price for them to handle them for us.

Q. You accepted the $2,000, didn't you?

A. We had to after we got the order; we had to take what they would give us.

Q. You objected to doing that, didn't you?

A. Most seriously and strenuously.

Q. How much did you think you ought to have?

A. We ought to have had about $10,000. I understood afterwards from Mr. Corey that they made about $35,000 profit on it.

Q. Who put in the work in the Royal Insurance building?

A. I did.

Q. At what time?

A. Since 1898; that was made by the Hall Safe Company. The Herring-Hall-Marvin Company has not put in anything in the Royal Insurance Company to my knowledge since 1898.

132 Q. I would like to have you explain on the record a little more explicitly how the opening of the store at Lake and Dearborn streets confuses and deceives the public.

A. To this extent: yesterday in my testimony, after reading it over, I found that I have confused the old Hall Safe & Lock Company with the new Hall Safe & Lock Company and that I had stated that the name of the Hall safe was of no benefit to me. I was virtually misstating the thing; I was being misguided. I thought that I was referring to the old Hall Safe & Lock Company prior to the selling out to the Herring-Hall-Marvin Company, and re-

ferring to the present Hall Safe & Lock Company and the present manufacturers of Hall's safes I would say this: that the reputation that they have and the reputation that they go under is very valuable to me, and for any other concern to come into Chicago by the name of Hall Safe & Lock Company after I have been here since 1898 is very confusing to the public. They came in here under a wrong name, and my friends go in there, the public go in there and they are liable to buy safes thinking it is my institution.

Q. Because it is a Hall safe?

A. Because it is a Hall safe, yes, sir; because we have had our agents out representing that it was a Hall safe, made by the Hall boys, whose reputation is good, whose reputation always has been good since they have started into the business on account of the goods that they have made, which we consider practically superior to any of the balance of the safes that are made.

Q. In other words you consider the new Hall safes superior to the old Hall safes?

A. I consider the new Hall work altogether superior to the old Hall work. It is entirely different, their burglar construction.

Q. You have said you have been in business there since 1898. The truth is you have been in business there since 1886, haven't you?

A. Representing the Hall's safes, yes, sir.

Q. Yes, sir, representing the Hall's safes?

A. Yes, sir.

Q. And people go into your store expecting to find Hall's safes?

A. They come in there to buy second-hand safes, but most usually Hall's safes.

Q. Hall's safes?

A. Yes, sir.

Q. And the fact that the Herring-Hall-Marvin Company established a store at the corner of Dearborn and Lake streets,
133 with such signs as they have up there, you think would confuse the public, because people who are seeking Hall's safes might go in there?

A. I know it confuses the public in this way: they have been in there and they have come over to my store and told me that they went in there thinking it was the Hall Safe & Lock Company that they had previously dealt with, and that while they were in there they tried to corrupt their minds as to the safes the Hall Safe & Lock Company represented, as to the Hall safes that they sold.

Q. Name any person that has made such a statement as that to you.

A. I can't recall it now, but I can give them to you the next time I see you. I can name them under oath. I will give you several.

Q. Yes, I wish you would.

A. They have lost trade by it. I will say that they have lost trade by condemning us.

Q. Well, I wish you would just give me their names at the next meeting.

A. The agent of the Pacific Express Company was in only last week and told me the same thing.

Q. When did you sell him Hall's safes?

A. I sold him Hall's safes a year ago.

Q. How?

A. A year ago or two years ago.

Q. When before that?

A. Probably a year previous to that.

Q. And when before that?

A. I think they had just come here then, had moved here; the Pacific Express Company had just moved to Chicago.

Q. If I understand your testimony it is that through your long association with the Hall product from 1886 and the old stand at 52 and 54 Wabash Avenue, as you call it in your advertisements, people seeking Hall's safes or Hall's standard safes naturally resort to you and that locality for them?

A. Yes, sir.

Q. And that any action on the part of the Herring-Hall-Marvin Company that tends to draw them to any other locality is an injury to you; that is the effect of it, isn't it?

A. There has been probably fifty people that have asked me if I had moved. They asked me if I had changed my location; they have asked me if they were the Hall Safe & Lock Company and sold *sold* the same manufactured goods that we did, and in that way the public become confused and think that they are buying the safe made by the Hall boys, the Hall Safe Company. It is very confusing and very detrimental and it places me in a position that is not at all pleasant, because people think that we are misrepre-
134 senting that we are selling the Hall's safes, that we are not selling goods that we represent to sell; that they are not made by the Hall people. They learn that from the employees of the store of the Herring-Hall-Marvin Company.

Q. And the opening of this store at the corner of Dearborn and Lake streets tends to draw people seeking Hall's safes away from the place that you think they would naturally resort to?

A. Yes, sir.

Q. And that leads necessarily, does it not, to confusion?

A. Yes, sir.

Q. And it was because of that fact that you sought by your original bill in this case to put a stop to it?

A. Yes, sir, to prevent them from keeping the sign up that properly belongs to us. They use the same lettering that we use, Hall Safe & Lock Company. The old name of Hall's Safe & Lock Company had the apostrophe "s" on the Hall; they left that off and use it the same as we do.

Q. You knew all the time and know now, do you not, that the people occupying the store at the corner of Dearborn and Lake streets are the successors by purchase of the original Hall's Safe & Lock Company of Ohio?

A. No, sir, not until I read their affidavit.

Q. You didn't know it prior to that time?

A. No, sir, I didn't know that they had purchased——

Q. You haven't any doubt of it now, have you, Mr. Donnell?

A. No, I think if they swear to it that such is the fact.

Q. What do you mean by referring to your custom and good will?

A. Why, I mean that the reputation that I have made—the reputation that I have made for the company that I represent, the Hall Safe & Lock Company, and the work that I have put in and the friends that I have made—we will sell a great deal of work to men that are in need of our work through friendship, through confidence.

Q. The establishment of a store at the corner of Dearborn and Lake streets does not take away from you your personal friends, does it?

A. Well, I can't say; I don't know. It may deceive them into thinking that I am not the proper representative of the Hall Safe & Lock Company or the Hall's safes, as I advertise and claim to be.

Q. What are the safes that have been known in the trade since 1854, or thereabouts, as you mention in paragraph 7 of your bill, known as Hall's——

Mr. MERRICK: You had better read the paragraph, I think
135 in order that he may know what the paragraph is, or let him read it.

Mr. ALDRICH: Let him read it.

The WITNESS: You mean the safes manufactured the same as that?

(The question was read as follows: What are the safes that have been known to the trade since 1854, or thereabouts, as you mention in paragraph 7 of your bill, known as Hall's?)

A. They have been fire-proof safes, fire and burglar proof safes. There has been but very little improvement on them, with the exception of the dovetails and the cone bolts, which were put on the burglar safe.

Q. My question was designed to elicit information as to the manufacture of the safe, by whom were the safes manufactured known as Hall's safes, Hall's standard safes, from 1854 down?

A. Hall Safe & Lock Company, Joseph L. Hall and Edward C. Hall, the father of Joseph L. Hall, as I understand it. Joseph L. Hall succeeded him, I think, in 1854. Joseph L. Hall organized the Hall Safe & Lock Company and the Hall Safe & Lock Company were in existence up to 1892, when the Herring-Hall-Marvin Company succeeded them.

Q. And in that time the safes manufactured by the people you have named had come to be known in the trade as Hall's safes?

A. Yes, sir.

Q. And it was with that that you have been connected during all this period?

A. Yes, sir.

Q. Are the safes manufactured by the Herring-Hall-Marvin

Company of the type and character and quality of safes manufactured by the original inventor?

A. Yes, sir, the Herring-Hall-Marvin are; that is, the safes that we got were. I couldn't say as to all of them.

Q. I am speaking of those that they are manufacturing now.

A. Now, they are not the same as I have seen, and as far as their fire proof safes are concerned I don't know anything about them.

Q. Are the safes manufactured by the Hall Safe Company of Cincinnati, in which the Hall boys are now interested, of the same character and type of those manufactured by the original inventor?

A. No, sir, they make a different safe, with the exception of the fire proof safes, and I think they are just the same.

Q. That is true likewise of the safes manufactured by the Herring-Hall-Marvin Company, is it not?

136 A. I couldn't say. I don't know how they manufacture their safes. I know how the Hall boys do.

Q. As an expert you are sufficiently familiar with the product of the Herring-Hall-Marvin Company to know that that is true, are you not?

A. Well, you can't tell about a safe unless you see it made. I think their burglar proof product is manufactured under specifications the same as the Hall burglar proof product is manufactured. In the Hall burglar proof safes the construction has been revolutionized in the past ten years. As I said yesterday the old Hall Safe & Lock Company's reputation is very poor for burglar proof safes and that of the Hall boys is very good and they have sustained it and they have not contaminated it with the reputation of the old Hall's Safe & Lock Company.

Q. How long had those boys been in the business as Hall's Safe Company when you adopted this corporate name in 1898?

A. I think they had been in business about two years. I think they went in business in 1896, but we bought goods from them just as soon as they started. We were buying goods from them and the Herring-Hall-Marvin Company at the same time.

Q. You think they were started in 1896 or just commenced getting ready to start in 1896?

A. I think we bought goods from them in 1896. I am not positive as to that, either.

Q. What time in 1896?

A. I think it was in the fall or in the winter.

Q. You speak in this bill filed by you against the Herring-Hall-Marvin Company of the large profits that you derive from the use of this name of Hall's safes.

A. Yes, sir.

Q. What have been your profits in that respect?

Mr. MERRICK: I object to that, without showing him the bill or letting him read what he does claim. I don't understand that he claims to have received large profits from the sale of Hall's safes.

Q. I call your attention to the following language in the third paragraph of your original bill:

"* * * Is a going concern and has been and is actively engaged in the business for which it was organized and has been and is now doing a large and profitable business."

At the end of the fourth paragraph I read as follows:

"And that such exclusive right as aforesaid is of great advantage to and source of great profit to your orator."

And at the end of the fifth paragraph the following:

"And that such portion of its business is a great advantage and a source of great profit to your orator."

137 And in the middle of the tenth paragraph the following:

"And that by reason of such continued business and permanent location and by advertising itself as such dealer in said Hall's safes and safe material of its own manufacture, it has acquired a reputation well and firmly established in the trade and with the public, and such reputation and good will is of the highest value and importance to your orator, and that by reason of its exclusive agency of the sale of said Hall's safes so made as aforesaid, and by reason of its long experience in the safe business, it has established for itself and for said safes so sold by it a reputation for fair dealing in such products of very great value and from which your orator derives large profits in the prosecution of its said business."

And at the end of the 18th paragraph:

"To the great injury and irreparable damage of your orator in the premises."

The same language is likewise found at the end of the 19th paragraph, and at the end of the 20th paragraph is the following language:

"With intent to deprive your orator of the business that would otherwise, by reason of its long established business and reputation come to your orator in the usual and ordinary course of business."

You seem, Mr. Donnell, from these quotations from your original bill, to have placed a large value upon the use of the word Hall in connection with your business and to have asserted that it is a source of great profit to you. I would ask you to state to what extent per annum, since the year 1898, it has profited you, and whether you have any accounts that will enable you to answer this question definitely.

Mr. MERRICK: I object to the question as improper, incompetent and not proper cross-examination at all, nothing of that kind having been elicited in chief, and I instruct the witness that he need not answer the question unless ruled to do so by the Court.

Mr. ALDRICH: Question reserved for the Court.

Q. Who were the stockholders in the Hall Safe & Lock Company of Illinois, organized by you in February and May, 1898?

A. Mr. A. L. Deane and myself and Mr. Merrick, Mrs. Donnell Miss Lillie Deane.

Q. At what time did any of the Hall boys become stockholders in this company?

A. In 1899 or 1900. I am not sure which.

138 Q. Was it understood at the time of the organization that they should become stockholders therein?

A. They had not expressed themselves; we had not asked them to become stockholders at that time.

Q. When did you confer with them about the organization of a corporation by that name in this state?

A. I think it was in January or February, I am not sure which, February, I think it was.

Q. Prior to the actual organization of the corporation?

A. Yes, sir, to them and their lawyer both.

Q. Who was their lawyer?

A. I have been trying to think of his name. He was a Cincinnati lawyer.

Mr. MERRICK: I think I can supply it for you. Mr. W. C. Cochran?

The WITNESS: No, it was Tom—somebody else. It wasn't Cochran.

Mr. MERRICK: Well, you can supply it later.

The WITNESS: Yes, sir.

Mr. ALDRICH: I wish you would.

Q. What was said between you and the Halls with reference to organization of this corporation?

A. We asked them if they had any objection to using their name of Hall and asked them what they thought about the legality of organizing. They said the Hall Safe & Lock Company had surrendered their charter and gone into liquidation, and Mr. Deane and myself, after consulting with our lawyers, thought that we were perfectly safe in commencing a new business, under a new name.

Q. Why did you need to confer with the Halls about this subject?

A. Well, I had been with them for years; I knew that they were going to succeed in their business because they were practical safe men and I intended to stay with them. We were friends and always have been.

Q. But you could stay with them without organizing a corporation of that name in this city.

A. Oh, yes, I could have stayed with them under any name, but at the same time I thought it was their name and it was no more than right for me to ask them if it would be agreeable to them. We may not have sold their safes. They may have taken their agency away from us, which would have been very embarrassing.

Q. They could have given you permission to use their name without consulting a lawyer. Why was it necessary to consult a lawyer?

A. We wanted to find out whether we had a right to organize. We didn't know whether the charter had been surrendered properly.

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Q. What, if anything, was said about the attitude of the Herring-Hall-Marvin Company, with reference to the use of that name?

A. Nothing was ever said to me at all about that. I never knew anything about it.

Q. Why was it necessary for you to consult your lawyer about the use of that name?

A. Simply because I wanted to know about the legality of it. I didn't know whether we were allowed to use it or not.

Q. Why did you have any doubt about the legality of it?

A. Well, the same as I had any question. It was perfectly simple, at the same time I wanted to be sure. I didn't want to set out a corporation, expend money for organizing it and then have it thrown out. It requires an attorney to do those things.

Q. But if the Halls gave you permission to use their name, what legal question occurred to you that made it necessary to have a lawyer's opinion upon the right to use it?

A. As to whether we were entitled to organize under the laws of the State of Illinois or not. We didn't know but what the old Hall Safe & Lock Company name might cut some figure, and they wouldn't issue the charter to us.

Q. Isn't it a fact, Mr. Donnell, that you had under consideration the right to use the name that had been so long used in connection with this business here?

A. I didn't understand the question.

(The question was read.)

A. That I had the right to use it?

Q. No, you had under consideration—Wasn't the question concerning which you consulted your lawyer, the question as to the right to use the name Hall Safe & Lock Company, in view of the fact that that name had been used here for so long a period?

A. No, it was simply whether we could organize under the State laws or not. That was all I wanted, if we could then, of course I was going to organize, but I knew that it would be——

Q. You knew that you could organize the Donnell Safe & Lock Company, for instance, or the John Jones Safe & Lock Company, under the laws of the State of Illinois, without consulting a lawyer, didn't you?

A. Yes, but I didn't know whether I could use the name Hall Safe & Lock Company after it had been a corporation in the State of Ohio.

140 Q. And you were not sure you could use that name because it had been used so long by another corporation?

A. The length of time didn't amount to anything; just simply that there was another corporation by that name. I knew nothing about it. I was perfectly ignorant of that.

Q. I understand that you consulted a lawyer about it here, and that in your consultation with the Hall boys they consulted a lawyer also.

A. Yes, sir, I think their lawyer was there while I spoke to them about it. The only other lawyer I spoke to about it was Mr. Merrick, my attorney who organized the company.

Q. What, if anything, was said about the Herring-Hall-Marvin Company being a trust?

A. What was being said about that?

Q. No, what was said at that time?

Mr. MERRICK: By whom, anybody?

Mr. ALDRICH: Between you and the Hall boys.

A. Oh, I never said anything to them. I told them that they were a trust, and I didn't want to work for them; that they tried to

turn the orders over to Mosler, and let the Moslers build them; work that we were selling—Mr. Pullen used to write us letters when we got onto a job, and let them turn it over to the Moslers, or let Moslers pull off and make another bid for it. In that way I knew that they were working together.

Q. My question was designed to elicit whether or not that was talked about at the time of your conference with the Hall boys with reference to the adoption of the name here.

A. Not that I recollect.

Q. Well, when was it that you told them that they were a trust?

A. Every time I would go down there, from 1897 up.

Q. How many conferences did you have with the Hall boys about the name in this particular locality?

A. Only once, and that was a very short time. It didn't amount to anything. They were perfectly agreeable.

Q. How much stock did the Hall boys acquire when they finally came into your corporation?

A. About $6,500 $6,000.

Q. Out of a total capital stock of how much?

A. $25,000.

Mr. MERRICK: The original capital stock was $5,000. It was afterwards increased to $50,000. That accounts for $6,000 out of a $5,000 corporation. I don't think that has appeared of record yet.

141 Q. How much of your $50,000, capital stock, as it stands increased now, has been issued?

A. $25,000 paid in.

Q. So that the Halls own one-quarter of your capital stock as it now stands?

A. No, I sold some stock for them. I don't know exactly how much they do own now. I think they own a half of what they bought, or a third. I am not sure at all.

Q. My question was to find out how much they now own.

Mr. MERRICK: I shall object to it, as not being cross-examination, incompetent and immaterial,—how much they own. If you know how much they own, you can answer.

A. Yes, they own $2,000 of the stock now.

Q. Is that all?

A. That is all.

Q. What relations have they to this litigation?

A. None that I know of. I wish they had.

Q. Isn't it a fact that they employ Mr. Hatch in this case or caused him to be employed?

A. I paid Mr. Hatch myself. I employed Mr. Hatch.

Q. Have you any understanding or agreement, of any kind or description whatsoever, with the Halls, with reference to this litigation?

A. No, sir. I didn't think they treated me right in the first place by not paying my expenses in this thing. I thought they were as

much interested in it as I was. It is an expensive litigation, and they haven't stood any of it yet. I paid Mr. Hatch myself.

Q. Have they agreed to——

A. Sir?

Q. Have they agreed to, at any time?

A. No, sir.

Q. Who told you that the Hall boys were released from any and all obligations not to go into the Safe business?

A. They did themselves, showed me the release.

Q. When was it they told you that?

A. Why, shortly after they went out. They said they had no agreement with them now, and they were at perfect liberty to go into business for themselves. I asked them about it.

Q. That was before they actually did go into business?

A. When they were buying their machinery I asked them if they could use the name of Hall.

Q. That subject seems to have been quite frequently discussed between you and them.

A. Yes, sir, I was very much interested that the name should continue. I blamed the boys for selling out the name. I didn't think they did right.

Q. When did you first learn that they had sold out the
142 name?

A. I learned that they were going to sell it out before arrangements were completed with the Herring-Hall-Marvin Company. Mr. Hall and I were in New York at the time.

Q. And you learned afterwards that they had done so?

A. Yes, sir.

Q. And they were told again, as I understand you, that they had been released?

A. Yes, sir.

Q. Did they tell you or write to you that they had been reinvested with the right to use the name Hall?

A. No, sir.

Q. You took the opinion of lawyers on that subject?

A. No. They said they never sold the name Hall out to them; they simply sold their factory and machinery, and as long as they stayed with them they couldn't make safes, but when they left them they were at perfect liberty to do so.

Q. To use the name of Hall?

A. Yes, sir; they didn't sell their name to them at all.

Q. When did they tell you that?

A. When they went into business.

Q. The present Hall's Safe Company?

A. There was a suit against the Hall Safe Company some years ago down there, and I was interested to know what was in it, at that time we used to discuss it quite frequently, and this information was elicited at that time. The Herring-Hall-Marvin Company I think started the first litigation with them some seven or eight years ago.

Q. Before the formation of your corporation, wasn't it?

A. Yes, sir.

Q. You knew of it about the time that it was started?
A. Yes, sir.
Q. Discussed it with the Hall boys from time to time?
A. Yes; every time I would see them I would ask them how they were getting along with their suit.
Q. They told you there was nothing in the suit?
A. Yes, they told me there was nothing in it; that they thought it was a bluff; that they simply wanted to use it as an advertisement to try to make them appear as if they were not responsible.
Q. Did they tell you they had seen lawyers on that subject, or did they ask you to see lawyers on that subject?
A. I don't know as they told me they had lawyers, but I knew that they had lawyers, and, speaking of the lawyer's name, he told me he thought it was legitimate to organize the Hall Safe & Lock Company, and now it comes to me that it was Thomas McDougall,
143 of Cincinnati. I was trying to think of that name a few minutes ago. His name comes to me now.
Q. Who was it that told you that there was no sale, transfer or conveyance, of any trade name or trade mark included in the sale to the Herring-Hall-Marvin Company, and when did they tell you?
A. Nobody told me that. They told me that they didn't sell their name—the name of Hall,—that was never considered.
Q. And who was it that told you, and when did they tell you, that the receivers of that company had no right as a matter of law or as a matter of fact, to sell and convey, and that they could not sell and convey the right to use the name of Hall or any collocation of the word Hall to the cross-complainant in this case, or to anyone else?
A. I don't exactly catch that last.
Q. Take it and read it from the answer to the cross-bill, the 43rd paragraph of the answer.
(The witness examines cross-bill.)
A. That was a legal question. That was filed by my attorney, as a matter of law, that they had no right.
Q. When were you told that by anybody?
A. During my conversation with my attorney, before the bill was filed, and I also got it from the sense of the Hall boys' agreements that they didn't sell their name, or anything of that kind. They simply sold their machinery, made a regular bill-of-sale of it without any trade marks or anything else.
Q. Well, that was a question that you also investigated, as I understood, before you organized the corporation?
A. Yes, sir. The Hall boys had told me before we organized the corporation that they had not sold out their name: that they had a right to use it; in fact, they said they would not sell out so that they couldn't go into business if the Herring-Hall-Marvin Company wasn't a success. Edward Hall told me that in New York, and he hung them back on that a month until they came after him and gave him the time that he wanted. He sold to them on his own terms, and as I understood from him he made negotiations for the heirs of the estate.
Q. Mr. Pullen was there also at the time?

A. Yes, Mr. Pullen was in New York at the time. Mr. Pullen was not there when I met Mr. Hall in New York, but I think—I don't know whether he was there when negotiations were closed or not—I think I understood from Mr. Hall that he was there.

144 Q. You have testified with reference to your instructions to George Hambleton Brooks and other employés. Is it not a fact that you directed your salesmen and employés to impress upon intending purchasers of safes, or safe materials, the superiority of the safe known as "Hall's Safe"?

A. Yes, sir.

Q. Did you not also instruct Mr. Brooks and your other employés to represent that the safes sold by you were the original Hall safes?

A. No, sir.

Q. Why didn't you?

A. Simply because it would have been false and unbusiness like and the public would have very soon found it out. If we would have sold the safes of the original Hall Safe & Lock Company—the Hall Safe Company, it would create a confusion with the public, and we couldn't have explained it away; because our competition is very strong and bitter, there is a great deal of feeling in competition in the safe business, especially in this town, and most of it is directed to the Hall Safe & Lock Company——

Mr. MERRICK: When you speak of the "Hall Safe & Lock Company," do you mean your Company?

The WITNESS: The Hall Safe & Lock Company of Chicago. The competition is directed to the Hall Safe & Lock Company of Chicago, by the Diebold, the Mosler, the Trumbull and the Herring-Hall-Marvin Company, and if we represented that we had sold the original Hall Safe they could have very easily have disproved the fact, and it wouldn't have been business for us to have done so, and I don't know that I ever heard the statement made by Mr. Brooks as to whether or not it was necessary to have any instructions from me, because he was an old employé, and he knew the circumstances as well as I did. I don't remember of ever instructing him at all.

Q. You instructed him, did you not, to say that the only safes made by the Halls he was selling?

A. Probably I might. It is more than likely that I did.

Q. Did you tell him, or any other employés, to say that your place of business was the "old stand"?

A. No, that was not necessary. I didn't think that necessary. I was liable to have told him that, though.

Q. What do you mean by "old stand"?

A. Well, we have been representing Hall's products since 1886, as dealers; I have been representing the Hall product since 1880. I am well known throughout the northwest, throughout the whole

145 city of Chicago; very well known amongst bankers and amongst large buyers of safes.

Mr. MERRICK: Do you mean personally, Donnell?

A. Yes, sir, personally I am well known.

Q. Well, you did give Mr. Brooks and other employés instructions which, in effect, said to them that anyone else pretending to sell Hall

'es were imitators, did you not, and that any other safe pretending be Hall safe was an imitation safe?

Mr. MERRICK: I object to that, because the question calls for an swer of the witness which would be a conclusion of law, or of fact, of mixed law and fact, otherwise inadmissible. You can ask him iat he did and what he did not, but you can't ask him what, in ect, it amounted to.

(The question was read.)

A. I didn't say it was an imitation safe. I don't think the occa-n was ever necessary to bring that to the attention of any of my ents, because, as I said before, they thoroughly understood the cumstances and explained that the safe was made by the Hall boys, only Hall people making safes.

Q. Yes, but don't you know that they said that any other Hall's fe was an imitation Hall safe, and not a genuine Hall safe?

A. I don't know what they said.

Q. Did they have instructions to so hold out your business to the blic?

A. No, sir, because that was too broad a word to use. We simply d them that we were selling the safe made by the Hall boys, the ll Safe Company of Cincinnati.

Q. Yes, but what I want to know is what you said to them about y other Hall's safe being an imitation?

A. I don't think we had occasion to say that, as the Herring-Hall-mpany were not represented, and nobody else was authorized to l safes here until last June.

Q. Why have you advertised in the public press of Chicago that y other Hall safe is an imitation?

A. Simply because they are representing that they are selling the ll's safes, and we are not selling the Hall's safes,—they are selling e Herring-Hall-Marvin safe.

Q. They are selling the safe that is the product of a m-nufactory ginally established by Joseph L. Hall, are they not?

Mr. MERRICK: That is a question of law, and I object to it, as im-aterial and incompetent, for that reason.

(The question was read.)

6 A. They are not selling the same safe, the same construction of safe originally manufactured by Joseph L. Hall.

Q. The business of the Herring-Hall-Marvin Safe Company you ow to be the business originally established by Joseph L. Hall?

A. No, sir. The Herring-Hall-Marvin Company is a combina-n of the Herring people of New York who got a black eye in Chi-go, after the Chicago fire, and the Marvin people's safe also.

Q. And the Hall safe?

A. And the Hall safe, and the combination there would mislead ople, and as the name of the Herring and the Marvin are not equal that of the Hall——

Q. Well, I recur to my question. The Herring-Hall-Marvin Com-

pany is selling the safes, the product of a factory originally established by Joseph L. Hall?

Mr. MERRICK: That is objected to, as before, for the same reason.

A. I can't say as to that, whether they are or not.

Q. I thought you testified that this business established by Joseph L. Hall was originally located in the city of Cincinnati?

A. Yes, sir.

Q. That it was subsequently removed to Hamilton, Ohio which is a suburb of Cincinnati, is it not?

A. No, sir.

(The question and answer were read.)

The WITNESS: The business was moved to Hamilton by the Herring-Hall-Marvin combination, as I so understood it.

Q. And the safes now sold by the Herring-Hall-Marvin Safe Company are the products of the factory so removed from Cincinnati to Hamilton?

A. As to that, I can't say whether they are or not.

Q. Is that factory idle or is it producing?

A. I think the factory is producing. Whether it is producing the same safes or not that were manufactured by Joseph L. Hall, I don't know. They are not marking them as such.

Q. Why do you say that the product of this Hamilton factory is an imitation of the Hall safes?

A. I never said so.

Q. What was the purpose and object, then, of the advertisement to which your attention has been directed, as follows:

"Caution:—The only safes made by the Halls are sold in Chicago at the old stand, 52 and 54 Wabash Avenue. Beware of imitations. Hall's Safe & Lock Company."

In view of your explanation of the confusion existing in your mind, or rather, in your answers to some of my questions of
147 yesterday as between the Hall Safe & Lock Company and the Hall Safe Company, I will ask you what imitations you refer to?

Mr. MERRICK: I object to the question as having been already fully inquired into and answered.

—. The imitators are virtually our competitors who claim that we are not selling the Hall safe at all; that the original Hall safe is made by the Herring-Hall-Marvin people. We refer to the product of the people that are making the only Hall safe that is made by the Hall Safe Company of Cincinnati.

Q. And it is against the product of the Herring-Hall-Marvin Company that you caution the public in this advertisement?

A. Not so much that as it is the stories of our competitors.

Mr. MERRICK: May I inquire who he means by "competitors," right in this connection?

Mr. ALDRICH: I will ask the question.

Q. To whom do you refer by your statement?

Mr. MERRICK: By the word "competitors"?

Mr. ALDRICH: By the word competitors?

A. The Diebold Safe & Lock Company; the Herring-Hall-Marvin Company, the Mosler Company, and, in fact, the Trumbull Safe Company.

Q. The word "imitations," as used in this advertisement can hardly be applied to stories circulated by compositors. I again ask you to what it refers as used in this advertisement?

A. It refers to, as I say to my competitors' stories. They tell people that we are the imitators of the Hall safes, and we tell them by that that we are not; that they are the other imitators of the Hall safes.

Q. If you will examine the advertisement which I hand you, Mr. Donnell, I think you will desire to change your answer. (Handing advertisement to the witness.) And to enable you to do so, I will ask you whether or not the word "imitations" as used in that advertisement is not intended by you to apply to the product of some manufacture?

A. No, it is not specially. I didn't have it in mind as to that at all.

Q. You are talking about the safes, aren't you?

A. Yes, sir.

Q. You have said that the "only safes manufactured by the Halls are sold at the old stand"?

A. Yes, sir.

Q. You have cautioned the public——

A. Yes, sir.

148 Q. —that such *such* is the fact?

A. Yes, sir.

Q. You have said, "Beware of imitations"?

A. Yes, sir.

Q. That means imitations of the Hall safes, does it not?

A. The Hall Safe Company's safes.

Q. Don't you now see that that word does not refer to the stories told by your competitors, but refers to some product?

A. Our competitors state that we are the imitators of the Hall safe, and they often state that there is no Hall making safes; they have made the statement that Halls are not making safes; that the Hall people were bought out by the Herring-Hall-Marvin Company, and in order to prevent anybody else from buying a safe, thinking they are getting that safe from the Hall Safe Company, my object was to put that in more than anything else.

Q. Now, whose product is an imitation of the product of the Hall boys at Cincinnati now?

A. I don't know as I could say anybody's was an imitation.

Q. You still think that that word refers to the stories told by your competitors?

A. It was done more for that than anything else.

Q. Now, if you gave any instructions to your employés after you made your arrangements with the Hall Safe Company of Cincinnati, I take it that you would have said to them as much as you would say in your advertisements, wouldn't you?

A. I don't say that I would have to tell them to tell people to beware of imitators, because they would be on the ground themselves, and could explain to them the difference.

Q. You think, then, that they were sufficiently conversant with the Safe business to be able to state the substance of this advertisement without any instructions from you?

A. They would be able to state to the customers the actual state of affairs as they exist, which they have always done, to my knowledge. If the statement had been made that we were the original Hall Safe & Lock Company, the Hall Safe & Lock Company, and it would have come to my ears, I would have corrected it, because it would have been detrimental to our business.

Q. How long was Mr. Trumbull in your employ?

A. He was in our employ from 1886 to 1897 or 1898.

Q. The fact is, he was in your employ until he went into liquidation, was he not?

A. Yes, sir.

Q. That was in 1898, wasn't it?

A. Yes, sir.

Q. You had no difficulty with him prior to your failure,
149 did you?

A. Well, no, I did not, but I knew he was scheming to go into business for himself four or five years before our failure, and I wanted Mr. Deane to let him go, but Mr. Deane thought a great deal of him, and he was a very competent man on the books. From our agents I learned a great deal. Mr. Trumbull always seemed to have a jealous spirit in him against me, for some reason or other, I don't know why, and he was always very bitterly opposed to me in a personal way. I knew it through my agents. I never said anything to Mr. Trumbull about it; I spoke to Mr. Deane about it, and, in fact, once insisted upon his being discharged.

Q. Mr. Deane and he were quite friendly?

A. Yes, Mr. Deane thought that Mr. Trumbull was all right.

Q. I have understood your testimony to be that you never offered Mr. Trumbull an opportunity to go into the Hall Safe & Lock Company of Illinois, as founded by you in 1898?

A. That is something I never approached him on at all. I wouldn't have gone into business with him.

Q. Did you ever talk with Mr. Trumbull to the effect that you were going to form a corporation to be known as "Hall Safe & Lock Company"?

A. No, sir.

Q. You didn't say anything to him about it?

A. No, sir.

Q. You are not able to say that A. L. Deane did not talk to him about that subject?

A. No, sir. I think if he had he would have notified me, though.

Q. If I have understood your testimony, you adopted the name so as to acquire the benefit of the reputation and trade pertaining to that name, is that not so?

Mr. MERRICK: I object to the question, as incompetent and immaterial, and having been already answered.

A. No, sir.

Q. In what respect is it not so?

A. Well, Mr. Deane and I talked it over, and we were going to take some other name. Mr. Deane thought that we could get our mail, if we went under the name of the Hall Safe & Lock Company, and also thought that we had been identified with the Hall safe so long that it would still—our location would still be in the minds of the public, and that we would benefit, but I didn't think as seriously of it as he did, and thought I could go ahead under my individual name.

Q. What, if anything, did you and Mr. Deane say to each other about the Herring-Hall-Marvin Company having passed into
150 the hands of a receiver in the previous December, and that it would be wound up and closed out?

Mr. MERRICK: I object to the question, as incompetent and immaterial, what he said to Mr. Deane. Mr. Deane is dead and it is hear-say testimony.

A. We had no conversation of that kind. We were led to believe that the Herring-Hall-Marvin Company were still going to continue, as the receivers had signified their intention of doing so.

Q. Do you know William A. Hoffman?

A. Yes, sir.

Q. How long have you known him?

A. Well, I think I have known him about twelve years—ten or twelve years.

Q. How long was he in your service?

A. About six or eight years.

Q. Up to the time of your failure?

A. Yes, sir.

Q. Do you recollect the conversation between Trumbull and yourself, at which he was present, in which you discussed the advisability of forming the Hall Safe & Lock Company, a corporation, in this State, and asked Trumbull to take an interest on it?

A. No, sir.

Q. Do you say that no such conversation took place?

A. No such conversation took place.

Q. I believe you have stated that you don't know what Mr. Deane's action may have been in the premises?

A. No, sir, although he would have told me if he had had any conversation of that kind; I would have been the first one he would have told. Mr. Trumbull had signified his intention of going into the business for himself before the idea came up or organizing the Hall Safe & Lock Company.

Q. But he had remained with you until you failed?

A. Yes, sir. They got the receiver to put him in charge, and while he was there he sold safes for our competitors. That was before we had any idea of forming a corporation.

Mr. ALDRICH: That ends the cross-examination, with the possible exception that I may wish to recall Mr. Donnell.

Mr. MERRICK: Then I will begin my re-direct examination at 2 o'clock tomorrow.

Whereupon the further taking of testimony herein was continued until 2 o'clock P. M., Thursday, November 10, 1904.

151 THURSDAY, *November 10th*, 1904—2 o'clock p. m.

Continuation pursuant to adjournment.

Present: Mr. Merrick, Mr. Aldrich.

The further cross-examination of the witness, JAMES W. DONNELL, was resumed by Mr. Aldrich as follows:

Q. Have you those photographs?

A. Yes, sir.

(The witness produces three photographs.)

Q. I show you a photograph, being one of those produced by you, which purports to be a picture of the European Hotel Windsor and to show certain stores in the first floor thereof, and ask you what the picture is and when it was taken and what it represents?

A. This is the picture of the Hall Safe & Lock Company's store at 147, 149 Dearborn St., when I came up here in 1880, as their manager, showing the signs over the door.

Q. How long did those signs continue?

A. I think they stayed there about a year. The following year we moved to 67 Washington street.

Q. What signs were used at Washington street?

A. We had new signs made, as these signs were too large to put up there; we had smaller signs.

Q. Containing substantially the same language?

A. Hall Safe & Lock Company I think those were. I have forgotten about the name of the signs on Washington street.

Mr. ALDRICH: The photograph shown the witness is marked for identification by the examiner and the counsel for the original complainant agrees that he will have the same present at the hearing of this cause.

(Said photograph was thereupon marked by the examiner, "For Identification, G. W. B., 11/10/04.")

Q. I hand you another photograph produced by you and ask you what it represents and when it was taken. (Handing photograph to the witness.)

A. That is a picture of our store in Omaha, taken in 1892.

Mr. ALDRICH: Let this photograph be likewise identified and delivered to counsel for complainant under the same understanding.

152 (Said photograph was thereupon marked by the examiner, "For Identification, G. W. B., 11/10/04.")

Q. What is the picture which I now hand you? (Handing photograph to the witness.)

A. That is a picture of the A. L. Deane & Company store at 77 Dearborn street, Chicago, taken in 1889.

Q. How long was that store maintained?

A. Up till 1890.

Q. And with the same signs?

A. No, sir, different signs.

Q. When were the signs changed?

A. When we moved to 52 and 54 Wabash avenue.

Q. These signs were maintained as long as you were at Dearborn street?

A. Yes, sir; they were not large enough for the Wabash avenue store.

Mr. ALDRICH: This picture will be likewise marked for identification and retained by counsel for complainant under the same agreement.

(Said photograph shown the witness was thereupon marked by the examiner "For Identification, G. W. B., 11/10/04.")

Redirect examination by Mr. MERRICK:

Q. Referring, Mr. Donnell, to the picture last identified by you, I note that immediately above the door and under the words "Consumers Coal Company" appears the sign "Hall's Safe & Lock Co." Was that sign moved from 77 Dearborn street to 67 Washington street?

A. No, sir. We moved from 67 Washington street to 77 Dearborn street.

Q. Now, let us understand each other and ourselves about the big sign now appearing above the door at 52 and 54 Wabash avenue. Was that sign in existence, physically I mean, in 1886, in January, at the time that you entered into the written contract that has been offered in evidence in this case between you or A. L. Deane & Company and Hall's Safe & Lock Company?

A. It was in the basement unused.

Q. In the basement in Washington street?

A. In Washington street, yes, sir.

Q. That sign had been built or made prior to 1886, had it?

A. Yes, sir, it was put up, as I understood it, shortly after the fire.

Q. And where had it been from the time it was built shortly after the fire up to the time you moved to Wabash avenue?

153 A. Up to 1882 it was on—part of it was on the store at 147 Dearborn street, and when we moved from 147 Dearborn street to 67 Washington street we couldn't use it and we put it into the basement. When we moved to 77 Dearborn street we couldn't use it and also kept it in the basement. It was a very handsome sign and the letters were all cut out, and when we moved to 52 and 54 Wabash avenue, we had about 42 or 43 feet frontage there and we took the sign and had it made over into the same sign it is now, reading "Hall's safes."

Q. Now, you say that you have been unable to locate or find or produce the inventory made or taken at the time of the purchase by you of the safes, both old and second-hand, horses, wagons and other personal chattels included in the purchase by you as A. L. Deane & Company from Hall's Safe & Lock Company.

A. Yes, sir.

Q. State whether or not, if you can recall, this large sign that I am interrogating you about was included in the chattels which passed by that transfer.

A. It was.

Q. Now, as I understand you, from these exhibits and from this testimony—if I am wrong I want to be corrected—when you first opened up your place of business in 1880, when you came up from St. Louis as the agent of Hall's Safe & Lock Company, its place of business was at 147 Dearborn street?

A. Yes, sir.

Q. Where the Windsor European hotel now is?

A. Yes, sir.

Q. You thereafter removed to Washington street?

A. 67 Washington street.

Q. And then moved to 77 Dearborn street?

A. Yes, sir.

Q. And you were there in 1889, at the time this photograph was taken?

A. Yes, sir.

Q. And you then moved, in 1890, to 52 and 54 Wabash avenue?

A. Yes, sir.

Q. In your cross-examination, either yesterday or the day before, you referred, Mr. Donnell, to your testimony concerning a letter written by Mr. Deane. May I ask as a matter of clearing up the atmosphere a little if you did not mean your affidavit with reference to that letter?

A. Yes, sir.

Q. You haven't testified before this week in this case, have you?

A. No, sir.

Q. You haven't testified in open court?

A. No, sir. I should have said affidavit.

Q. And the reference that you made was with reference
154 to a letter written by Mr. Deane, a copy of which letter was attached, I think, to the affidavit of Mr. Pullen on the application for a preliminary injunction at the hearing before Reed, special master; wasn't that what you had in mind?

A. Yes, sir.

Q. Now, referring still to that matter, I understood you to testify that you were not aware that Mr. Deane did write such a letter.

A. Yes, sir, I so testified.

Q. When did you become aware or when did you first know that such a letter had been written by Mr. Deane?

A. When it was produced in the Master in Chancery's court.

Q. Before Mr. Reed?

A. Before Mr. Reed, yes, sir.

Q. On your cross-examination by Mr. Aldrich day before yesterday, I think it was, he inquired of you concerning the contract between the original Hall's Safe & Lock Company and A. L. Deane & Company, in which he read you from the contract this provision:

"The said A. L. Deane & Company further agree and obligate themselves not to represent or sell safes, vaults, fronts, iron or steel work of any kind or character or other articles in this line except those manufactured by Hall's Safe & Lock Company;"

and then he asked you "How long did you keep that covenant," and you answered: "A very little time." He then asked you, "About how long," and you answered as you are reported here, "I don't think it lasted more than a month. We bought second-hand safes the very minute we commenced up here. That was our object in coming." State, if you can, how long that covenant which I have just read to you was observed and what you mean by saying that you "bought second-hand safes the very minute we commenced up here."

A. We bought those from Mr. Hall. He sold those to us and gave us the privilege as a matter of course. He sold them and we sold them again to the public.

Q. Well, they were the second-hand safes that you had bought of him, you mean?

A. Yes, sir.

Q. In that contract, and I now recall it, in this same connection, I note that the contract contains a provision as follows:

"The said A. L. Deane & Co. obligate and bind themselves not to buy or deal in any second-hand safes, vaults, fronts, locks, or other articles other than those which may be taken in trade from
155 time to time for work manufactured by the party of the first part and bought by the said A. L. Deane & Co. from the party of the first part by the said A. L. Deane & Co. in the conducting of their business."

Explain what that covenant was made to provide for; what was the course of doing business about buying second-hand safes in trade?

A. In selling a safe, why, we would take another second-hand safe in trade, at a stipulated price, for instance, we had a $100 safe as the cash price of it; if a man had a safe we would value it at $40; we would allow him $40 in trade for it, getting $60 for the new safe. That sort of a trade Mr. Hall was opposed to; he didn't care much about taking in second-hand safes unless he got them for almost nothing; and when we bought the agency and it was turned over to us we also bought the second-hand safes as well; so it probably took us a year and a half to sell those second-hand safes that we bought from them. They had accumulated there.

Q. So that you did buy second-hand safes as provided for in the contract immediately upon starting into this business with them, didn't you?

A. We traded for them, yes, sir.

Q. You traded for them as provided in this contract?

A. Yes, sir.

Q. You state here that you don't think it lasted, that is to say, the keeping of this covenant lasted more than a month.

A. That should have been a year, because we bought other second-hand safes when we run out of them. They lasted us fully a year.

Q. That is, the second-hand safes lasted a year?

A. Yes, sir, that we bought from them, and when they would get on the market we would buy them irrespective of the trade—irrespective of the safe trade. This was understood by Mr. Hall.

Q. You answered that you bought new work of other companies about three years after the contract was made.

A. Three or four years I should judge it was, yes, sir.

Q. They also knew about that.

A. We told them the United States Express Company wanted the work and if they couldn't furnish the price we would have to get it from somebody else.

Q. Now, on page 156 of your cross-examination yesterday or the day before, in answer to Mr. Aldrich, where he says, "I will ask you what you mean in the original bill filed in which you say, 'That said safes so manufactured and dealt in by your orators as aforesaid also enjoy a very high reputation by reason of the name of the manufacturer thereof," you said, "That refers to the vault linings and vault work more than anything else, as they are differently constructed from any other safe manufactured and afford more security than any other safe manufactured." What did you mean in the bill by the word "manufacturer," who were you referring to?

A. To the Hall Safe Company, and the Hall Safe & Lock Company of Chicago as to vault linings and bank work.

Q. The Hall Safe & Lock Company of Chicago?

A. The Hall Safe Company of Cincinnati and the Hall Safe & Lock Company of Illinois.

Q. You see, Mr. Donnell, there are so many of these Hall Companies I want you to particularize whenever you refer to anybody——

A. Maybe I didn't understand that original question.

Q. There is the original Hall' Safe & Lock Company, the Hall Safe Company of Cincinnati and the Hall Safe & Lock Company of Chicago Illinois?

A. Yes, sir.

Q. In further cross-examination by Mr. Aldrich he asked you this question, after inquiring about the use of the name of the Halls and Hall's Standard Safes; "Q. Then why should you want to use the name Hall, Hall's Safes or Hall's Standard Safes," and you said if you had organized the Donnell Safe & Lock Company you would have done better, &c. He then asked you this question; "Well, why don't you just abandon the use of the name and change the name," and you answered "Simply because I don't have to." Will you explain what you mean by the expression, "Because I don't have to?"

A. Simply because I had organized the Hall Safe & Lock Company and I had become identified with it. We had been running it so long and there was no interference and no question came up as to the thing not being proper. We had nothing of that kind to interfere with us with the exception of our competitors, and after I had organized and made the reputation through the sources that I had, why I felt that it would not be necessary, and I didn't have to do it simply because I had organized it in a legitimate way. I had inquired about it from the Hall boys; I had virtually got their permission, and I thought it was all right and was running
157 it as a legitimate concern, and I think it is a legitimate concern today, and if it — not, if the Court decides it is not, why then, as a matter of course, I am perfectly willing to abide by the decision of the Court.

Q. You are reported here in your testimony, on yesterday or the day before, on cross-examination, to have made the following replies to questions submitted by Mr. Aldrich; "Q. You say that you have advertised more than you have before; what do you mean by that? A. Why, we have advertised the corporation of Hall's Safe & Lock Company more than we ever did the Hall's Safe. Q. How much more? A. Fifty times more." Is that statement correct?

A. I think that is an error. It should be four or five times more or five or six times more. It was simply my recapitulation. It wasn't fifty times more.

Q. You didn't advertise the Hall Safe & Lock Company at all did you, as A. L. Deane & Company, when you were representing them, did you?

A. No, we advertised A. L. Deane & Company as dealers. We couldn't advertise the Hall Safe & Lock Company.

Q. They did their own advertising?

A. They did their own advertising, yes, sir.

Q. So practically you didn't advertise the Hall Safe & Lock Company at all other than you occupied a store with that sign in front of it, is that what you mean?

A. That is about all. We would put their name in the directory, Hall's Safe & Lock Company, A. L. Deane & Company agents, in that way, A. L. Deane & Company dealers.

Q. You have been inquired of concerning an advertisement in which you used the language, "Beware of imitations," and Mr. Aldrich and myself have both been unable to get clearly before us what is meant by the language, "Beware of imitations," other than that you have said you meant by that that you- competitors were representing, or misrepresenting you, rather; are you prepared to state now whether there is anything else you wish to say with reference to that?

A. We had a case this morning that came up wherein our competitors represented that they were selling Hall Safes. A party telephoned to us and said he wanted us to deliver the goods we promised him. We told him we thought it was a mistake and he said it was no mistake. The Herring-Hall-Marvin Company sold him the safe, or a vault door, I am not sure which.

Q. That is what you meant by "Imitations," is it?

158 A. Yes, sir. They claim that they represent the Hall Safe, the Hall Safe & Lock Company.

Q. If you will allow me, then, you are etymologically incorrect in the use of the words "Beware of Imitations," is that correct?

A. Yes, sir. It was simply put there without any thought at all, you might say, simply to call attention to it more than anything else, the same as the Herring-Hall-Marvin Company and the Diebold Company do, the same thing.

Q. You mean by, "Beware of imitations," to non-customers to be sure to identify the product, is that the idea?

A. To be sure to identify our institution, yes, sir.

Recross-examination by Mr. ALDRICH:

Q. I wish you would explain to me, Mr. Donnell, if you meant the Hall Safe Company of Cincinnati and the Hall Safe & Lock Company of Chicago, why, in your answer to the questions referred to on page — of the record, you thought it necessary to say anything in your original bill about Joseph L. Hall and give the history of the business from the year 1854 down to the present time?

A. Well, because they were virtually connected with my business and me up to the present business. Joseph L. Hall's business up to 1892 was a flourishing business and had a great reputation. I was identified with the business up to 1892. In 1892, when they sold out to the Herring-Hall-Marvin Company, the public looked upon it as a trust; burglars began to rob their safes, as I explained the other day, and the safes began to have the same reputation as all inferior safes. The public were not satisfied with the organization, that is as far as I was individually concerned and the information I got, and the people using the safes that were robbed were also dumbfounded and confused, and it virtually put the safe back to an inferior safe. When the Hall boys took hold of it and started the factory, stating that they were making different kind of work, had new machinery and a different kind of machinery, we took hold of it with them and took the name of the Hall Safe & Lock Company at that time and worked up that reputation to that extent until today it is a valuable franchise and reputation.

Mr. MERRICK: Just one question I forgot to ask him, Mr. Aldrich. It is very short and it is only fair that I ask Mr. Donnell with reference to others.

159 Q. Did you select the name, Hall Safe & Lock Company, at the request or suggestion or instigation of the Hall brothers or Hall boys at Cincinnati or did you obtain their consent merely as a matter of courtesy?

A. The talk with the Hall boys gave us their consent to organize the company. I don't remember whether it was their proposition or not, that we do so, but if my memory serves me right it was.

By Mr. ALDRICH:

Q. You spoke about a case arising this morning where, as I understood you, the Herring-Hall-Marvin Company had sold a safe for a bank, or a vault door——

A. To a business house.
Q. To some business house?
A. Yes, sir.
Q. And such business house had called on you to deliver it?
A. Yes, sir.
Q. Although you had no knowledge of the transaction?
A. No, sir.
Q. What was that house?
A. Bullock, Ward & Company, 69 Desplaines street. Those things come up every day.

Q. At page — on your cross-examination of yesterday you stated that you thought the Hall boys were as much interested as you were in this litigation, and as I understood you, you expressed yourself as disappointed when they did not contribute to or bear the expense of this litigation. What did you mean by that?

A. Well I thought they might have given me their attorney up here and paid his expenses and given me information in regard to their organization, which we had to go to the expense to get ourselves.

Q. Why should they bear the cost of your lawsuit was the point of my question?

A. Simply because we are large dealers. We pay them on an average eight and ten thousand dollars a month for their goods, and if we were put out of business they wouldn't have us as customers.

Q. There is a reason beyond that, is there not, Mr. Donnell, found in the fact that you are both using the name Hall in connection with this product?

A. I have no connection with them, only that I know that they are honorable men, and have gone into the business, as far as they knew, in an honorable way, to see them succeed. I have been a friend of theirs all my lifetime and I am very much interested in them and very much interested that I retain the name Hall Safe & Lock Company for their benefit and for my benefit, because we have both grown up together. I consider that the new business that has been built up here by the Hall boys and by myself is far better than the reputation that we had when the Hall Safe & Lock Company——

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Q. In other words you think that their reputation of the goods known as "Hall's Safes" and "Hall's Standard Safes" &c. has increased in late years?

A. The Hall Safe Company's Safes have increased within the past—since they have been established, because their product is new, it is modern and they are progressive. I think they are more progressive than Mr. Hall was. They meet the demands of the public better than Mr. Hall did. They are not as independent as he was, and I think we do better and more business through their new methods.

Q. You are making more money than you did before, are you not?

A. No, sir, competition is very strong.

Q. You did in the years prior to the organization of the present Hall Safe & Lock Company of Chicago advertise very extensively A. L. Deane & Company as dealers in or agents for Hall's Safes, didn't you?

A. Not very extensively, only when we made a trade for a safe where we put in advertising. Our agents did advertising for us. We are great believers in canvassing the country with our agents. That is one way I do my business today. That is one reason I thought the Hall Company, before I came up here, didn't make the money out of the agency that they could make.

Q. What is the relation between you and Mr. Deane in this firm of A. L. Deane & Company with reference to the ownership of the business?

A. I had a half interest in the business with Mr. Deane.

Q. And Mr. Deane had a half interest?

A. Yes, sir. It was just a company, A. L. Deane & Company, and I was the "Company."

Mr. MERRICK: Only partners?

The WITNESS: Only two partners.

Mr. MERRICK: A. L. Deane and James W. Donnell?

A. Yes, sir. At one time, though, we had a third partner, one of our agents we took in, but he was only with us a year when he died.

Q. How can you recollect that that large sign was included in the inventory?

A. Because the old thing was in our way and I didn't know whether to make kindling wood out of it or not. The question came up about the desks and one thing and another and I thought they wanted a fabulous price for it, and those little things I get
161 hotter at than I do the big things, and the sign I dragged around simply for the letters, because they were beautiful letters and I intended at some time to take the letters out of it, and put them into another sign, but I never had a space big enough to do it, until I got to Wabash avenue. I had one or two extra letters made so as to get the word "Safes" on it.

Q. You don't mean to say that you recollect that there was an item in the inventory that said "one large sign" or anything of that kind?

A. No, I couldn't say that at all. I don't believe that I could specify any of the articles that we got. They were all combined in desks and—just gone over in a casual manner, lump together.

Q. All you meant by your answer that it was in the inventory was that you know you acquired that sign at that time?

A. Yes, sir.

Whereupon the further taking of testimony herein was continued subject to notice.

FRIDAY, *November 11th*, 1904—2 o'clock p. m.

Continuation pursuant to adjournment.
Present: Mr. Merrick, Mr. Aldrich.

Testimony of William Holabird.

WILLIAM HOLABIRD, produced as a witness in behalf of the complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Direct examination by Mr. MERRICK:

Q. What is your name?
A. William Holabird.
Q. What is your residence, Mr. Holabird?
A. Evanston, Illinois.
Q. What is your business?
A. Architect.
Q. And where is your place of business?
A. Monadnock block, Chicago, Illinois.
Q. What is the style of your firm?
A. Holabird & Roche.
Q. How long have you been an architect, Mr. Holabird?
A. About 24 years.
Q. How long have you practiced your profession, if you
162 have so practiced it, in Chicago?
A. The same length of time.
Q. Do you know James W. Donnell?
A. I do.
Q. How long have you known him?
A. Sixteen or eighteen years.
Q. Have you ever done any business with Mr. Donnell?
A. Yes.
Q. Have you ever bought any safes of him?
A. I think not. I will qualify that by saying Hall's safes.
Q. Have you ever contracted with him or his company, the Hall Safe & Lock Company of Chicago, for deposit vaults or safe work, bank work, in any building that you have been the architect of?
A. Yes, sir.
Q. For what period of time have these negotiations lasted, Mr. Holabird?
A. About 14 years.
Q. Since the year 1898 have you had any business dealings in the safe line with Mr. Donnell or his company?
A. You refer to safes in the broad term or do you mean——
Q. I mean safes, deposit vaults, vault linings, and all work of a kindred character.
A. Yes, sir, I have.
Q. Can you name any particular buildings wherein that work has been done by him?
A. Yes, sir; the Tribune.

Q. The Chicago Tribune building?
A. Yes, sir.
Q. Do you recall any others now?
A. He did the work in the Marquette. That is before 1898, though, I think.
Q. Well, confining ourselves to the period of 1898.
A. Yes, sir.
Q. In your negotiations you have had with him state whether or not any representations were made by him with reference to whom he represented or whose safes he was putting in, or whose safe material he was putting in.
A. I have always understood it was the Hall Safe & Lock Company. He generally referred to them as "the Hall boys," I think.
Q. The Hall boys?
A. Yes, sir.
Q. Has he ever made any representations to you that the safes or safe material that he was representing or selling were the product of the Herring-Hall-Marvin Company or the Herring-Hall-Marvin Safe Company or the original Hall Safe & Lock Company of Cincinnati, Ohio?
A. I will have to answer the first two parts no, but when I first dealt with him I always understood that they were manufacturing work or getting their work from the Hall Safe & Lock Company.
163 Q. But since that time, since 1898——
A. I never heard him refer to the combination or the two combinations.
Q. Who did you understand him to mean by "the Hall boys"?
A. They were the sons of the original manufacturer of the Hall safes.
Q. State whether or not you know whether they had been since 1898 engaged themselves in the safe business in Cincinnati?
A. I don't know except by hearsay.
Q. Has there ever been since 1898 any confusion arising in your mind as to whether or not the product that was dealt in was the product of any other than the company that Mr. Donnell represented in Chicago?
A. I am not positive about that.
Q. I mean in your own mind, was there any representations made to you that led you to confuse the Herring-Hall-Marvin Company product with the Hall boys' product?
A. No, I thought the probabilities were that certain kinds of work might emanate from other sources besides the Hall Safe & Lock Company, because I am very certain that he sometimes dealt in second-hand safes and vault doors, but I never heard anybody else make a statement that they bought from the Herring-Hall-Marvin Company or that combination.
Q. I show you an affidavit, Mr. Holabird, dated November 4, last, purporting to have been signed by you and ask you if that is your affidavit.
(Handing said affidavit to the witness.)

Mr. ALDRICH: That is no affidavit in the case, is it, Mr. Aldrich?
Mr. MERRICK: Yes, the one we got here recently.
The WITNESS: Yes, I signed that.
Q. Just glance it over, please. (The witness examines said affidavit.) State whether or not Mr. Donnell ever made any representations to you that he was engaged in the business of manufacturing safes at the present time under the old, original name of Hall's Safe & Lock Company of Cincinnati, Ohio, or whether he was manufacturing them on his own account,—vault linings, &c.?
A. No, I don't remember his making any such statement as that.
Q. Do you know the corporate style of the firm or the corporation that is now run by what you call the Hall boys of Cincinnati?
A. No, sir.

164 Cross-examination by Mr. ALDRICH:

Q. Mr. Holabird, you are one of the leading architects of this city, are you not?
A. That is a rather delicate question for me to answer.
Q. Well, you are in very extensive practice?
A. Yes, sir.
Q. And largely as I understand, Mr. Holabird, in connection with the erection of the large business blocks of this city?
A. Yes, sir.
Q. In these business blocks there is a large amount of vault work to be done usually, is there not?
A. There is.
Q. You have known Mr. Donnell for a great many years as the representative of what are known as Hall's Safes, Hall's Standard Safes, &c., have you not?
A. I have.
Q. You have never known him as the representative of any other safe, have you?
A. Yes.
Q. What other?
A. He manufactures or has manufactured—submits plans for special vault work or bank work on a system of his own, and there are different from those manufactured by most vault and safemen in a number of particulars. He has always stated to me that he has had those manufactured at Cincinnati, at this same place, by the Hall boys, but they are different from the standard safes.
Q. Have you been frequently at his place of business at 52 and 54 Wabash avenue?
A. Yes, sir.
Q. You know that he has maintained for a great many years the same signs there, "Hall's Safes," "Hall's Standard Safes, A. L. Deane & Co., agents."
A. Yes, sir. Yes, Hall's Safes—well he had a large one it seems to me, Hall's Safe & Lock Company.
Q. I believe the evidence show that there has been no change in the signs in recent years, as I understand it?
A. I haven't noticed any change.

Q. You knew nothing about the combination of the Hall Safe & Lock Company of Cincinnati with the Herring Company and the Marvin Company, did you?

A. Nothing except what I have seen in the papers. I don't know anything about the details.

Q. You knew nothing about the time when the Hall boys left the combination, if they left it at all, do you?

A. Not that I remember. I might have known it at the time, but I don't remember now.

Q. Well, can you say that you did know at the time?

A. Yes, because that is a line of business, of course we are
165 interested in, and those things we hear of and if we see a notice in the papers we read it, but I can't say that I read this or heard of it. I don't think I could say that.

Q. What have you understood to be the difference between the Hall Safe & Lock Company of Cincinnati and the Hall Safe Company of Cincinnati?

A. Well, I haven't understood there was any particular difference between that, but I understood this hyphenated company was a trust and the others were working for themselves—this so-called combination of different companies.

Q. That is a matter of recent date isn't it?

A. Yes, since I have heard of such combination.

Q. Hasn't your attention been drawn to that particularly since this lawsuit, in which the firm of Mr. Donnell's is engaged?

A. No, sir.

Q. When did Mr. Donnell first advise you that he had made a change in his business relations with the several manufacturers?

A. I don't remember of his ever advising me so.

Q. I see that you say in this affidavit that you bought vault work purchased for your clients of Mr. Donnell after a personal investigation of the work itself and after a comparison of the workmanship of said work with other work and of the prices asked therefor; with what other work was such comparison made as to the character and quality?

A. It is customary in these large buildings to ask for competitive bids on vault work. We try to write such specifications so that each one can bid. The ones I particularly remember are the Diebold Company here and a man named Harris, who bid on the work with the Hall Safe & Lock Company, and we decided in every instance except two that the work presented by the Hall Safe & Lock Company or Mr. Deane or Mr. Donnell—that their work was superior in point of workmanship, and we got more for our money too.

Q. You thought that was true prior to 1898 as well as subsequent thereto?

A. Yes, sir, and it is true now.

166 *Testimony of W. I. Osborne.*

W. I. OSBORNE, called as a witness in behalf of complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name?
A. W. I. Osborne.
Q. Where do you live, Mr. Osborne?
A. Evanston.
Q. What is your business, please?
A. Vice-president of the Central Trust Company of Illinois.
Q. How long have you been a resident of this county, doing business in Chicago?
A. Since 1893.
Q. How long have you been vice-president of the Central Trust Company of Illinois?
A. Since its organization, in July 1902.
Q. Do you know Mr. James W. Donnell?
A. Yes, sir.
Q. And his Company, the Hall Safe & Lock Company of Chicago?
A. Well, I know nothing about his company except as he has represented it.
Q. Have you ever done any business with his Company, through Mr. Donnell or his representatives?
A. Yes, sir.
Q. When did you do such business with him?
A. In May 1902.
Q. State very briefly what was that, Mr. Osborne?
A. We contracted through Mr. Donnell for the vault equipment and vault door and collateral safe and safe fixtures.
Q. At your bank building or bank office at the corner of Monroe and Dearborn streets?
A. At Monroe and Dearborn streets, Chicago, yes, sir.
Q. Did you have a written contract with Mr. Donnell's Company at that time with reference to that work?
A. It was not in the nature of a contract, but a proposition that was accepted and specifications furnished under it.
Q. Then this was work done under specifications, was it?
A. Yes, sir.
Q. At that time was there any representation made by Mr. Donnell or any of his representatives or employés to the effect that that or his company was the original Hall Safe & Lock Company of Ohio that had sold out to the Herring-Hall-Marvin Company?
A. No, sir.

167 Cross-examination by Mr. ALDRICH:

Q. What was your business before you connected yourself with the Central Trust Company of Illinois, Mr. Osborne?
A. Practicing attorney.

Q. Have you been acquainted with the vaults, safes and kindred subjects, the reputation of the different companies for a great many years?

A. No, sir, only generally; not personally acquainted with them.

Q. Did you personally have charge of this matter?

A. I did.

Q. This contract to which you have referred?

A. I did.

Q. In that connection did you visit Mr. Donnell's place of business?

A. Where, in Cincinnati or here? In fact I did in both places.

Q. In both places?

A. Yes, sir.

Q. Had you ever been at Mr. Donnell's place of business prior to the occasion of looking into this matter with reference to this contract?

A. Here in the city?

Q. Yes.

A. I can't say whether I had ever been there or not.

Q. You have seen his place of business frequently?

A. I presume likely I have passed it.

Q. You had known in a general way for a great many years, had you not, the reputation of the so-called Hall Safes, Hal's Standard Safes?

A. Oh, as I have seen their advertisements and had a general understanding of their reputation, that is all. I had no occasion to look into them much.

Q. You knew it to be good, did you not?

A. So far as I knew it was good, yes.

Q. Did you know how long Mr. Donnell had been in the safe business in the City of Chicago?

A. No, sir.

Q. How long had you known him in the safe business?

A. I had known Mr. Donnell for, I think since 1895, and I have never known him to be in any other business. I don't know whether I knew him to be in that business when I first met him or not. I never knew him to be in any other business.

Q. You knew him to be the representative, did you not, of the Hall Safes?

A. Not until this matter came up.

Q. You knew him to be in the safe business?

A. I think I did. I had very little knowledge about the safe business before I was called upon to make this purchase for equipment.

168 Q. What was the representations made to you with reference to this particular work?

A. In what respect? The-r representations made to us were—they guaranteed to do the work and guaranteed practically the work and the price.

Q. How long did they say they had been in the safe business?

A. I don't know that it was ever mentioned.

Q. What was the occasion of your going to Cincinnati?

A. I went there about this time—I was called there on some other business, and I asked Mr. Donnell to give me a letter that I might be sure that the work was in progress and there would be no delay. We were very anxious there should be no delays in furnishing the work.

Q. You had already contracted, I take it, for the work?

A. Yes, sir. We understood the work was in progress, in process of manufacture, and I simply called there to see it.

Q. What manufacture did you understand you were getting?

A. The manufacture of that institution in Cincinnati. I don't know the corporate name of it.

Q. You didn't know anything about it, whether it was made by the original Hall Company or whether it was made by a new Hall Company, did you?

A. No, sir.

Q. You simply thought that you were contracting for the work to be done by an established and reliable manufacturer and were anxious to see that you got the product in accordance with the specifications?

A. Why, my confidence was in Mr. Donnell more than any one else. I simply relied upon his statements and largely upon him.

Q. I have asked you what his statements were?

A. Well, his statements were that he would guarantee to give me as good work as anybody and at as good a price and figure.

Q. What, if anything, did he say about the Halls?

A. I don't remember that he said a word. If he did say anything I can't recall it.

Q. Do you know the difference between the Hall Safe & Lock Company of Cincinnati and the Hall Safe Company of Cincinnati?

A. No, sir.

Q. Do you know anything about the difference between the Company known as the Herring-Hall-Marvin Company of Cincinnati and the Hall Safe Company of Cincinnati?

A. No, sir. You mean, do I know the difference between them or the distinction? No, I don't know anything about them.

Q. You don't know any distinction?

A. No, sir.

169 Q. I take it then, Mr. Osborne, you know nothing about the history and growth of the business known as the Hall Safe business at all?

A. Not specially of my own knowledge, no, sir.

Q. Have you any knowledge or have any representations been made to you with reference to the connection of the Hall boys with the original Hall business?

A. No, sir.

Q. Did Mr. Donnell state to you that the only Halls who were now engaged in the safe trade were connected with the Company which manufactured these safes?

A. No, sir.

Q. Did he say anything to you about he had been in the business here in this City, representing the Halls?

A. Well, I don't know about representing the Halls. I don't know that he did about that. I think I do remember that he stated to me he had been in the business for years and the work he had furnished and that it had always been satisfactory and things of that kind.

Q. Did he state that the work he would furnish to you would be of the same character that he had been furnishing to his customers and that it had been satisfactory?

A. Work of the same character, yes, sir, as far as the satisfaction was concerned.

Q. Did the specifications which you have referred to indicate by whom the work was to be manufactured?

A. I have them here. I don't know whether you want to see them or not.

Mr. MERRICK: You can see them, Mr. Aldrick, if you wish. I don't know whether they do or not. I think not.

Mr. ALDRICH: I would like to have the original proposition of May 29, 1902, addressed to the Central Trust Company of Chicago, Illinois, made a part of the evidence in this case.

Mr. MERRICK: Well, I haven't offered that. If the witness can produce it I will be very glad indeed to do it.

Mr. ALDRICH: If you will allow us to have the custody of it long enough for the examiner to make a copy of it, that is all I ask.

Mr. MERRICK: Can you produce the original copy of that date?

The WITNESS: I can produce that.

Mr. ALDRICH: I don't care for the technical specifications, but I offer in evidence the original here.

Mr. MERRICK: We can agree to have it produced if you like, or read it into the record now.

(Witness thereupon produced, and Mr. Aldrich, counsel
170 for defendants, read into the record said documents above referred to as follows:

Specification of May 29, 1902.

"Hall's Safe & Lock Company, Incorporated.
Safes.
Vault and Safe Deposit Works.
52 & 54 Wabash Avenue.
Telephone, Main 2497.

CHICAGO, *May* 29, 1902.

Central Trust Company, Chicago, Ill.

GENTLEMEN: We propose to furnish you with the steel linings, safes and vault work, as per specifications, delivered in position complete and ready for use for the sum of Five Thousand ($5,000) Dollars, payable as follows: Three Thousand ($3,000) Dollars when vault work, linings, &c. are in position, and Two Thousand ($2,000) Dollars when safes are in position.

The vault doors, steel and electrical linings, collateral safe and temporary safes to be in position by July 1, 1902.

"It is understood that if work is not in position by July 1, 1902, we will deduct Fifty ($50.00) dollars per day for every day work is delayed beyond July 1, 1902, as liquidated damages.

Yours very truly,

HALL'S SAFE & LOCK CO.
JAMES W. DONNELL, *Pt.*"

Testimony of Edward C. Waller.

EDWARD C. WALLER, called as a witness in behalf of complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name?
A. Edward C. Waller.
Q. And you live in Chicago?
A. No, sir, I live in Cook County.
Q. How long have you lived in Cook County?
A. Since 1860.
Q. How long have you been in business in Chicago?
A. Since 1866.
Q. What is your business, please?
A. Real estate—I think it is 1866—yes, 1866.
Q. Have you done any building in Chicago?
A. Yes, sir.
171 Q. Have you erected buildings?
A. Yes, sir.
Q. In so doing have you been engaged at all in negotiating or purchasing or having installed for you deposit vaults, safe vaults, bank work and work of that character and descrip-
A. I have in connection with property I have in charge.
Q. What particular property, for illustration?
A. Home Insurance building, the Rookery building.
Q. In Chicago?
A. Yes, sir.
Q. Do you know Mr. James W. Donnell?
A. Yes, sir.
Q. Have you ever had any business with him in connection with installing deposit vaults, safes, bank work and work of that character?
A. Yes, sir.
Q. Can you name any instances?
A. Yes, sir. I had a vault lining put in the Home Insurance building, the Home Insurance Safety Deposit Vault Company; I had two large vault linings and doors put in the Rookery, through Mr. Donnell.
Q. Can you state approximately the latest work he has done for you?
A. Well, in the way of vault lining I think the last work Mr.

Donnell did for me or was instrumental in having done for me was in 1898 or 1899.

Q. Where was that, do you recall?

A. In the Rookery.

Q. Anything else that you can recall now?

A. Not of that class of work.

Q. You have bought safes from him since that time?

A. I have bought vault doors from him since that time.

Q. Have you bought safes from him, the ordinary commercial safes used by office men?

A. I think I have.

Q. Do you know the Hall Safe & Lock Company of Chicago, of which Mr. Donnell is president—do you know the name?

A. I know there is such an institution of which he is president.

Q. Do you know the concern known as Hall's Safe & Lock Company of Cincinnati? Have you ever heard of it?

A. Yes, sir, I have done business with it.

Q. Do you know the corporation known as the Herring-Hall-Marvin Company?

A. Only by reputation.

Q. In your negotiations, Mr. Waller, with Mr. Donnell, representing this company here in Chicago, the Hall Safe & Lock Company, has Mr. Donnell made any statements to you or inducements to you by any representations of any kind that he was engaged in soliciting business or doing work for the original Hall Safe & Lock Company of Ohio, now absorbed by the Herring-Hall-Marvin Company?

A. No, sir.

172 Cross-examination by Mr. ALDRICH:

Q. How long have you known Mr. Donnell?

A. Fifteen or 20 years.

Q. What business has he been engaged in since you have known him?

A. In the safe business.

Q. Representing what safe or manufacturer?

A. My impression is that the first business I had with Mr. Donnell—now, I haven't looked this up, but my impression is that it was for the old Hall Safe & Lock Company of Cincinnati, the first, I think; that is my impression; that they put in the vaults in the Home; that is my recollection of it.

Q. Where was his office or place of business when you first did business with him?

A. I really don't know. He came to my office.

Q. Have you ever been in his place of business, 52 and 54 Wabash Avenue?

A. Yes, sir.

Q. Many times?

A. Quite a number of times.

Q. Extending over what period of time?

A. I would not want to be exact, but I think the last—I would want—I don't remember the numbers; I can't be exact as to the num-

bers. I don't remember the numbers. He may have changed, but it was on Wabash avenue.

Q. That is the only place he has been, on Wabash avenue?

A. Yes, sir; I don't remember the numbers. I think when first I went there it must have been six or seven years ago.

Q. Do you recollect the signs on his place of business?

A. No, sir.

Q. Have you observed any change in them since you first went there?

A. No, sir.

Q. Have you any knowledge of the reputation of what is known as Hall's safes, Hall's standard safes, during twelve, fifteen or twenty years past in this locality?

A. I have never bought any of the Hall's standard safes.

Q. Well, Hall's safes or the product of the Hall Safe & Lock Company of Cincinnati?

A. Well, the time that we did business with them in the Home, at the time I purchased vault doors from them, in the Rookery—I purchased a good many—yes, I had knowledge of their reputation.

Q. They were well known as safe manufacturers, were they not?

A. We wouldn't have done business with them if we were not satisfied with their standing.

Q. Did you do the business through Mr. Donnell?

A. Yes, sir, entirely.

173 Q. You understood that he was representing them?

A. Yes, sir.

Q. When were you ever advised that he had ceased to represent them?

A. I think about the time that I made a trade with Mr. Donnell, when he was with A. L. Deane & Company, at the time that I put in the vault lining and doors in the Northern Trust Company building—they occupy part of the Rookery building now—it may have been before that time, but I think at that time.

Q. What did he say about it?

A. I think that he told me that he was now representing the Hall Safe Company of Cincinnati, a new corporation.

Q. What did he say about the Hall Safe Company?

A. He said it was an excellent concern; that they did fine work.

Q. What did he say about its relations to the Halls?

A. I don't remember that.

Q. Did he say to you that it had in it the same people who were originally in the Hall Safe & Lock Company of Cincinnati?

A. I don't remember that. I think on one occasion, Mr. Ed Hall, if I remember the name right—I may be mistaken—called to see me with Mr. Donnell.

Q. With Mr. Donnell?

A. Yes, sir; and I think a man by the name of Mr. Corey of that concern also called to see me.

Q. What did they say about being the same Halls who were in the original Hall Safe & Lock Company?

A. We didn't discuss that question at all.

Q. When were you advised that the Hall boys, as you say in your direct testimony, were in the Hall Safe Company?

Mr. MERRICK: Did he say anything about the Hall boys?

The WITNESS: No, I don't think *I* did.

Mr. ALDRICH: You had no advice on that subject?

The WITNESS: I don't remember any special advice on that subject.

Q. What was said at the time he stated that he had made a change in his relations, if he ever made that statement?

A. I think he said he could give me very excellent work now; that the Hall Safe Company was doing the best work in Cincinnati, he was satisfied; that he was their agent and would be glad to get the job, and I finally gave it to him.

Q. Did you ask him anything about the difference between the Hall Safe Company and the Hall Safe & Lock Company?

A. Only that they were different concerns; that they had formed a new company.

Q. Who told you that?

A. Mr. Donnell.

174 Q. What did he say about it?

A. He said he was agent of the new Hall Safe Company.

Q. Was there anything said about the original Hall Safe & Lock Company being in a trust or combination?

A. Not that I know of. I don't remember anything of that kind. He had no occasion to make any such remark to me.

Q. Did you make any examination to see whether the work of the new company was the same or better than the old?

A. I was satisfied with the work of the new company.

Q. As you had been satisfied with the work of the old company?

A. I was satisfied with the work of the old company, reasonably so.

Q. Were you making your purchases on the reputation of the Hall work or owing to your relations with Mr. Donnell personally?

A. Do you want me to answer that question?

Q. Yes.

A. When I am making a contract I generally look around to see who makes me the lowest figures amongst the responsible bidders.

Q. Those were the considerations——

A. I had done business with Mr. Donnell and had done it satisfactorily; consequently I gave him a chance to underbid the other people.

Q. What other people bid?

A. A. L. Deane & Company, as I remember, bid on the last two jobs.

Q. Was Mr. Donnell with them?

A. I think they were the last two bids I got in. I don't remember.

Q. Mr. Donnell was a partner of A. L. Deane & Company?

A. Not A. L. Deane & Company. Excuse me; I mean Diebold.

Q. The Herring-Hall-Marvin Company were not bidders?

A. I never had any business with the Herring-Hall-Marvin Company of any kind.
Q. You are not able to say when the Hall boys left the Herring-Hall-Marvin Company?
A. No, sir, I am not. There was quite an interval between the ne I was doing work and the time I started doing this heavy work, d it was during that time that the change was made.
Mr. MERRICK: That is you mean when you began doing business th Diebold?
A. Yes, sir, the first vault I put in, I put in with Mr. Donnell; the xt vault I put in the Rookery I put in with Diebold, and the next ut in through Mr. Donnell.

Whereupon the further taking of testimony in the above entitled se was adjourned subject to notice.

5 FRIDAY, *November* 18, 1904—2 o'clock p. m.

Continuation pursuant to notice.
Present: Mr. Merrick, Mr. Aldrich.

Testimony of Frederick J. Selden.

FREDERICK J. SELDEN, produced as a witness in behalf of complainant, having been first duly sworn was examined in chief by . Merrick and testified as follows:

Q. State your name and residence, Mr. Selden?
A. The Lessing Apartment Building, Evanston and Surf.
Q. In Chicago?
A. Yes, sir.
Q. How long have you lived in Chicago?
A. Continuously since 1890.
Q. What is your business, Mr. Selden?
A. Manager of the Western Branch of the Rumford Company, of ovidence, Rhode Island.
Q. And what is their business?
A. The Rumford Company are sales representatives of the Rumd Chemical Works of Providence, Rhode Island, who manuture Horsford's Acid Phosphate, Rumford's Baking Powder and er products of that nature.
Q. Where is your office or place of business in Chicago?
A. Number 6 Rush Street.
Q. How long have you been representing the Rumford Comy in Chicago?
A. In this capacity since 1896.
Q. Do you know Mr. Donnell, of the Hall Safe & Lock Company Chicago?
A. This gentleman? (Indicating Mr. Donnell.)
Q. This gentleman.
A. I have seen him many times. I never was introduced to him il today. I have seen him in his office there.

Q. Have you ever done any business with his company, through his agents?

A. Yes, sir.

Q. Who was the agent, do you know?

A. Mr. English, George English.

Q. Have you ever bought any safes or safe material from Mr. English, representing Mr. Donnell's company?

A. Yes.

Q. Can you state about the time it was?

A. We have one small safe bought from them about two years ago next month.

176 Q. Anything since that time?

A. And since that we purchased a large safe about last May of this year.

Q. May 1904?

A. Yes, sir.

Q. At the time that you purchased this safe, either the small safe two years ago or the large safe in May of this year, did you have any conversation with Mr. English with reference to the safes that you bought and who manufactured them?

A. Yes.

Q. Will you state briefly, in your own language, in your own way, what that conversation was?

A. In order to do that it will be necessary for me to give you some of the details as to what led up to it.

Q. That will be all right, I think.

A. The Baltimore fire consumed our Baltimore agency office and that necessitated the purchase of a new safe. When we learned of the details of this loss, which was a complete loss—the entire office was consumed, the entire contents of the safe was consumed with the exception of some silver spoons, which were partly melted—it brought the fact to us that if we suffered a similar loss it would be a very serious question, and in discussing that subject with our treasurer at Providence it was suggested that if we were at all alarmed as to the efficiency of the large safe which we then had in our 6 Rush street office, it was advisable to purchase a new one, because we wished to be absolutely safe, and out of this came correspondence which advised us of their having purchased a Herring-Hall-Marvin safe for the Baltimore office, and referring us to the company at Hamilton, Ohio. We wrote them and received several letters.

Q. That is you wrote the Herring-Hall people at Hamilton?

A. Yes, sir, and also received some cuts of the same &c. In this correspondence they stated that they had no representative here, and therefore I rang up the people we had dealt with before, Mr. English, and asked him to come over and look at our safe, which he did, and he said to us that if we were dissatisfied with the safe he would sell us another. I told him—in fact I showed him the cuts of the Herring-Hall-Marvin safes coming in the correspondence from Hamilton, Ohio, and said to him that he must figure against those people. He began to talk to me of the Hall safe made by the

Hall Safe Company of Cincinnati, the same as the small safe in my office, and about that time the treasurer happened to be in Chicago from Providence——

177 Q. The treasurer of your company?

A. The treasurer of our company, and I discussed the subject with him, suggested that he take up the subject and purchase a safe, either from the Hamilton concern or from Mr. English of the Hall Safe & Lock Company here. Mr. English looked at our safe; we went over to Wabash avenue, to the office, or store of the Hall Safe & Lock Company, where I think I saw this gentleman at that time, and Mr. English showed us the stock of safes they had. We picked out one, but found that it was too shallow. Our books require an eighteen inch depth. The result of this interview was that we finally obtained a price from Mr. English on a Hall safe made by the Hall Safe Company of Cincinnati, which was satisfactory, and we bought the safe, which was shipped to Chicago about the time they agreed to ship it, and it is now in our office. We since received a letter from the Herring-Hall-Marvin Company of Hamilton making inquiry as to whether we still wished a safe and we replied that we had purchased elsewhere. When Mr. English talked to us of this safe we used the letters and the cuts to induce him to make us a satisfactory price on the other safe, and his argument was that these safes were made by the Hall Brothers, whose father had started the old Hall Safe & Lock Company of years gone by, and that these men, having been practical men, could give us a better safe than the one which we could purchase from the Herring-Hall-Marvin Company of Hamilton, Ohio, and we understood perfectly that we were not buying from them because both the treasurer and myself, while we were talking with Mr. English, went out to the other office and looked into the Mercantile Agency book to ascertain the rating of the two concerns, and we found that the Hall Safe Company of Cincinnati had a satisfactory rating and the other was also rated in Hamilton Ohio, so that after that we felt perfectly safe in buying the safe we did purchase.

Q. Was that substantially all of the talk or representations Mr. English made to you about the manufacturer of the safe?

A. Well, I chaffed him a little about the Herring-Hall-Marvin Company and their safes, about which I had correspondence on the desk, and we distinctly understood that we were not buying their safes; that we were buying a safe manufactured by a different concern.

178 Cross-examination by Mr. ALDRICH:

Q. Were you advised that the business founded by the Hall Brothers' father, Joseph L. Hall, had ever been sold out, or did you understand that the Hall Brothers had succeeded to that business?

A. I wasn't told that, but I had always understood from other information that the safe companies of the country were consolidated in some form or other.

Q. Well, did you understand that the Hall Brothers who are now in the Hall Safe & Lock Company were a part of that consolidation?

A. Oh, no; he told me they were a different concern altogether.

Q. Different from what?

A. From the Herring-Hall-Marvin Company; they had no interests in common with each other and he intimated that the rivalry was quite strong between them.

Q. What was said about the successorship to the business founded by the father?

A. I don't think we discussed that.

Q. I understood you to say that Mr. English represented that they were the sons of the Joseph L. Hall who had founded the Hall Safe Company's business, or words to that effect, and as they had been brought up in the safe business they were better able to give you a satisfactory safe than men who had not been thus reared in the business, or words to that effect?

A. I think the idea he intended to convey to me was that these people had had a large experience in the safe business, but as to whether they were proprietors or whether they were employees I am not prepared to state.

Q. In what safe business had they had a large experience, did he give you to understand?

A. No, he did not say what they had, farther than that they had been brought up in the safe business.

Q. From what he said did you understand that this Hall Safe Company, whose product you purchased, was a new or an old company?

A. Why, I supposed when I bought that safe that the Hall Safe Company was an entirely new company.

Q. That it had just been recently formed?

A. Well, I didn't discuss that. Probably it wouldn't be fifty years old.

179 *Testimony of James W. Donnell.*

JAMES W. DONNELL, a witness in behalf of the complainants, recalled, further testified as follows:

Direct exa.....ation by Mr. MERRICK:

Q. Mr. Donnell, I show you the stenographer's typewritten record of the testimony you gave on this hearing, and I will ask you whether you have read it over and examined it?

A. Yes, sir.

Q. I will call your attention to page — of the testimony taken on the first day in which you were asked in chief by me this question; "How did you indicate your place of business with reference to the signs in front of your place of business on Dearborn street where the Unity building now is," to which you answered: "We had the windows lettered 'Hall's Safe & Lock Company,' and above "Hall's Safe & Lock Company,' and on the door, 'A. L. Deane & Company, A. L. Deane and James W. Donnell,' " and ask you if you want to make any corrections in that testimony?

A. On the window it should be, "Hall Safe & Lock Company's

Safes," and on the windows also, "A. L. Deane & Company." The photographs show that.

Q. On page — of the testimony taken the first day you were shown an affidavit by me of Mr. George Trumbull, and you stated, among other things, that the affidavit was false, and among other things you used this language, referring to Mr. Deane; "I knew that he would ask Mr. Trumbull to become his partner"; did you mean to answer in that way-?

A. No, that wasn't my intention.

Q. Did the stenographer leave out anything?

A. Yes, he left out the word "not."

Q. On page 59 of the original testimony you were asked the following questions by me and you made the following answers: "On the safes, deposit vault, bank work and general safe product that you sold, was the name 'Hall Safe & Lock Company' labeled on the safes," to which you answered, "Yes, sir." "Q. That you sold, I mean. I am talking now about the safes that were sold prior to the organization of the Herring-Hall-Marvin Company, on that safe work, the name of the Hall's Safe & Lock Company appeared, did it not?" You answered, "Always, yes, sir." "Q. Does that name appear upon any safes or bank vault material manufactured
180 by the Hall Safe & Lock Company"? And you answered, "No, sir."

A. That should be, yes, sir.

Q. That should be, yes, sir?

A. Yes, sir.

Q. You thought I said Herring-Hall-Marvin Company?

A. Yes, sir.

Q. On page 61 I asked this question: "Have you ever heard of there having been any confusion in the minds of prospective purchasers of safes in this city or in this particular territory about the origin of safes manufactured by the Hall's Safe Company and sold by you and the Herring-Hall-Marvin Company's safes"; and you answered: "Only through our competitors, customers coming into the store quite frequently muddle it up and we explain the condition of the Hall Safe Company and the Hall Safe & Lock Company of Chicago by telling them the Hall Safe & Lock Company of Chicago, sells the product of the Hall Safe & Lock Company"— The Hall Safe Company, that should be.

Q. The Hall Safe Company of Cincinnati, you mean?

A. Yes, sir.

Q. On page 100 of the second day's testimony, on cross-examination by Mr. Aldrich, you were asked this question: "Are you a manufacturer of safes and safe materials," and you answered: "Yes, sir, we manufacture vaults, if I remember right." Do you want the answer to stand in that way?

A. We manufacture vaults and vault linings.

Q. Then the words "if I remember right," are superfluous?

A. They are superfluous, shouldn't be in there at all.

Q. Did you use that language?

A. No, sir.

Q. On the same day, on page 108 of the cross-examination by Mr. Aldrich, you were asked this question: "The goods of other manufacturers was an incident rather than your principal business, was it not"? And you answered: "Towards the last it got to be a pretty big trade, after 1890—well, in 1889, I may say we bought a great deal of safes for the express companies. We couldn't meet competition with their specifications, and we had to meet it elsewhere. We had about 1500 safes from Diebold's."

A. That is entirely wrong. That is 50 safes, and that should be Cincinnati Safe & Lock Company.

Q. That should be 50 instead of 1500?

A. Yes, sir.

Q. Mr. Aldrich, in asking you about the difficulty that you had with the Herring-Hall-Marvin Company, about the con-
181 signed goods, asked you whether or not Mr. McKnight of his office didn't have charge of it, and you answered "Yes, I believe it was Mr. McKnight, and the reporter has, "He was hard pressed."

A. We were hard pressed.

Q. "We," meaning A. L. Deane & Company?

A. Yes, sir.

Q. On page 118 of the testimony taken on the 9th of November you were further cross-examined by Mr. Aldrich, and particularly about dealing with the receivers of the Herring-Hall-Marvin Company; you were asked this question: "You also continued to have business dealings with the Herring-Hall-Marvin Company or its receivers, did you not," and you answered "Yes, we wound up our old business with the receivers, things that had been ordered four or five years before."

A. Four or five months before.

Q. It should be four or five months?

A. Yes, sir.

Q. During the same cross-examination on that day, you were asked about the work put in the new Illinois Trust & Savings Bank; you answered the question as follows: "I sold that to them myself. The Herring-Hall-Marvin Company built it. That is one of our disputes. They paid me only $2,000 commission on that big job." Are you correctly reported there?

A. We had a dispute in regard to our commissions, it should have been. They paid us only $2,000 commission.

Q. By "disputes," you meant one of your pieces of work or jobs that you did?

A. We had a dispute in regard to the commission.

Q. But the work you understand, I mean, was one of your jobs?

A. Yes, one of our jobs.

Q. You were asked on that same date by Mr. Aldrich about the conversations that you had about the use of the name Hall and about their showing you a release from the Herring-Hall-Marvin Company, and you were asked this question: "When was it they told you that"? "A. Why, shortly after they went out. They said they had no agreement with them now, and they were at perfect liberty to

go into business for themselves." Then Mr. Aldrich asked you this question: "That was before they actually go into business," and you answered, "When they were buying their machinery I asked them if we could use the name of Hall." Is that the way you want to be understood?

A. When they were buying the machinery, yes, that is right.

Q. You said to me yesterday when I asked you about that
182 —you made the correction, "They" instead of "We." You misunderstood me now as you misunderstood him then?

A. Yes, sir.

Q. In other words, when they were incorporating this company and doing business, you asked them if they could use the name of Hall?

A. Yes.

Q. The stenographer in putting down your answer to the question by Mr. Aldrich as to whether Mr. Pullen was in New York at the time you said you were in New York and talked to Mr. E. C. Hall, has the answer as follows—Mr. Aldrich asked you the question, "Mr. Pullen was there also at the time,"—"A. Yes, Mr. Pullen was in New York at the time. Mr. Pullen was not there with Mr. Hall in New York, but I think—I don't know whether he was there when negotiations were closed or not—I think I understood from Mr. Hall that he was there." Do I understand from you that you want to have it remain that way?

A. That he was not there.

Q. You called my attention yesterday, in looking over this testimony, to the use of a different pronoun here, "they" and "we," in answer to the question, "Why have you advertised in the public press of Chicago that any other Hall safe is an imitation," and you answered, "Simply because they are representing they are selling the Hall's safes and they are not selling Hall safes"—the third "they" should be "we"?

A. Yes, that they say we are not selling the Hall safes.

Q. Now, on the last day of your examination, on the 10th, on my re-direct examination, in reference to my asking you about your cross-examination, you are reported here as using different corporate names, and I understood from you that the reporter had made a mistake, on page 164 of that day's testimony, in which I ask you a long question as follows: "Now, on page — of your cross-examination, I will ask you what you mean in the original bill filed in which you say that 'said safes so manufactured,'" &c.—and I finally conclude the question as follows: "What did you mean in the bill by the word 'manufacturer,' who were you referring to?" You answered at that time, "To the Hall Safe Company, the Hall Safe & Lock Company. Will you state what correction, if any, you want made in that testimony.

A. Yes, that should have been the Hall Safe Company, the Hall Safe Company of Cincinnati, and the Hall Safe & Lock Company of Chicago. It should have been the Hall Safe Company of Cincinnati.

183 *Testimony of John O. Krause.*

JOHN O. KRAUSE, produced as a witness in behalf of the complainants, having been first fuly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. Will you state your full name?
A. John O. Krause.
Q. What is your residence, Mr. Krause?
A. My home address is 1943 Lexington street.
Q. What is your business number?
A. 997 Milwaukee avenue.
Q. What is the name of your firm?
A. John M. Krause & Sons.
Q. What is your business?
A. Mortgage loan business and safe deposit vaults.
Q. Do you know Mr. Donnell, the gentleman sitting there? (Indicating Mr. Donnell.)
A. Yes, sir.
Q. Have you ever met him in any business transaction?
A. I have had some business dealings with him.
Q. How recently?
A. Well, our business relations began in the Spring or summer of 1901.
Q. Have you done business with him since that time more or less?
A. Well, we did some business with him then and since that we have attempted to do business but have not done any business with him since.
Q. Did you ever buy safes or safe material from him?
A. Yes, sir.
Q. When, please?
A. In the spring or summer of 1901.
Q. Did you deal with him personally?
A. Yes, sir.
Q. What was the purchase you made of him, please?
A. Why, we made a contract with Mr. Donnell.
Q. As the representative of the Hall Safe & Lock Company?
A. Yes, sir, for the lining and vestibule of the safe deposit vaults and a set of safe deposit boxes in that vault.
Q. You didn't buy then a small safe of him? You just had the vaults put in the building, is that the idea?
A. That is the idea.
Q. When you talked to him was there anything said about the Hall Safe Company of Cincinnati?
A. Not that I remember.
Q. Or the Hall Safe & Lock Company of Ohio?
A. No, I don't remember anything.
184 Q. Or the Herring-Hall-Marvin Company?
A. No.
Q. Did you make any investigation of those companies?

A. Why, in connection with Mr. Donnell I had no occasion to. At the time we got the figures from Mr. Donnell for the work we also got figures from—I think from Mosler and Diebold & Company.

Q. What representations were made to you by Mr. Donnell about his company, if anything?

A. Nothing that I remember.

Q. Since that time and within the last month have you had any conversation with anybody representing the Herring-Hall-Marvin Company, at the office of Aldrich & McAuley, about this safe matter?

A. Well I had a Mr. McAuley, I think his name was, call on me a month ago, possibly a little less than a month ago. He gave me a card upon which he seemed to represent the Home Insurance Company. He told me that he came up to see us about some safe deposit work that had been put in. I asked him what it was and he told me—he asked me from whom we bought our safe work, our safe deposit vault work and the boxes in the vault. I told him that we bought them from different concerns; that originally we bought some from the Hall Safe & Lock Company, and he asked me whether it was represented to us at the time we bought the work as being the work of the Hall Safe Company, and I told him—no, he asked me whether—I don't know just how he put it at the time but I think he asked me whether I knew who had manufactured the work. I told him I did; and I think he asked me whether I had been under the impression that the Hall Safe & Lock Company, Mr. Donnell's company, had made the work, that is the building of the vault boxes. I told him, no; that I knew that they had not made them themselves, and told him also, to corroborate my statement I cited him a little incident that transpired at the time I closed up the sale with Mr. Donnell, that is the final payment. I asked Mr. Donnell for a receipt in full from the manufacturers of that stuff that had been put in. I told him, "You can see from that little incident that I was under the impression that the Hall Safe & Lock Company were making that stuff; I knew they put it in; that they were the people we contracted with."

Q. Did he ask you to make any affidavit about it?

A. That is all he wanted to know. He cut his information short by asking me whether I had seen anybody on this thing at
185 all. I said, "No, I haven't heard or seen anything of the people. You are the first one to intimate anything of this kind to me," and with that he left, and about a week or ten days after that Mr. Schroeder called on me, but I never knew until Mr. McAuley called on me that there was anything pending in the shape of litigation between those people.

Cross-examination by Mr. ALDRICH:

Q. Had you, before contracting for vault work had any knowledge of the representation and character of the different safe manufacturing companies in the United States?

A. No, I had been around the city and looked at the different kinds of work that had been turned out by the different concerns, and when we got ready for work we took figures from different ones.

Q. What work did you look at?

A. The Illinois Trust & Savings Bank.

Q. Do you know by whom it was put in?

A. I couldn't remember now. I looked at some work put in by Mr. Donnell at Schiff's.

Q. Where is that?

A. Jefferson and 12th street, I think, somewhere in there; and I looked at some work in the Evanston Bank.

Q. Which bank?

A. Well, I can't remember the name of it now. I can tell what corner it was on; on the southwest corner there, one of the main streets.

Q. Also put in by Mr. Donnell?

A. I think that was Mr. Donnell's work.

Q. Did he represent that the work at the Illinois Trust & Savings Bank was likewise his work?

A. No, I don't remember that. I remember at the time I went around alone to a good many of these places to look at the work and get ideas, and of course the representatives of the various safe people also took us around at the time to different places.

Q. What work did Mr. Donnell mention as having been put in by him?

A. I know the Schiff job.

Q. Any other?

A. I think the Evanston job.

Q. Any other?

A. I don't remember now.

Q. Would you have any means for refreshing your recollection?

A. I haven't any writing anywhere that I remember that from.

Q. You naturally wanted to get *to get* your work from a thoroughly established and reliable firm, did you not?

186 A. Well, I don't know that we dwelt upon that so much. We had an idea of what we were wanting to get and we looked at different work that was established here, different vaults. We wanted to get ideas, and of course, when we got——

Q. Did you see the work at the Chicago National Bank?

A. That was not in place at the time.

Q. And the Royal Insurance Building?

A. No, I don't think I was ever in that vault at the time, with any of the vault people.

Q. Where did you understand that this work which you did get was manufactured?

A. Why, no representations were made to us at the time. We specified what we wanted——

Q. Was that specification in writing?

A. Yes.

Q. Have you a copy of the specifications with you?

A. We didn't put it up in a formal manner. We put it down in lead pencil, what we wanted figures on.
Q. Didn't you make written specifications for your work?
A. We didn't make it out, no.
Q. Didn't you sign a contract before you got through?
A. Yes.
Q. Where is that contract?
A. We may have a copy of it at the office now.

Mr. ALDRICH: Well, I will ask you to produce it before I conclude the examination.
Mr. MERRICK: Can you bring it in some other time, Mr. Krause?
The WITNESS: Yes, if we have it.
Mr. ALDRICH: I will adjourn the examination then, until you do so.

Testimony of Benjamin J. Schiff.

BENJAMIN J. SCHIFF, produced as a witness in behalf of the complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name, please?
A. Benjamin J. Schiff.
Q. Where do you live?
A. 503 South Jefferson street, City.
Q. What is your business in Chicago?
A. Well, we have safety deposit vaults and a ticket office at the same place.
Q. How long have you been established in such business?
A. The business itself about 12 years; the vaults about four years, I think.
187 Q. Do you know Mr. Donnell?
A. Yes, sir.
Q. President of the Hall Safe & Lock Company of Chicago?
A. Yes, sir.
Q. Have you ever bought any safes or vaults of him?
A. We bought the vault.
Q. Do you remember when it was?
A. When it was?
Q. Yes.
A. It was about four and a half years ago, I guess—yes, four and a half years.
Q. At the time that you had that vault installed who did you do your business with, Mr. Donnell or some of his agents?
A. Mr. Donnell.
Q. At that time what representations did he make as to whom he was representing?
A. Well, he was representing the Hall's Safe & Lock Company.
Q. Of Chicago?
A. Of Chicago.

Q. Were any other representations made by him about the safe business that you can recall?

A. No.

Q. Have you ever bought any other safe material of him, except in that one instance in which he put your vaults in?

A. From Mr. Donnell?

Q. Yes.

A. That is all, yes, sir. I wish to say, when my vault was ordered, it was ordered by specifications and all I know about the door was that Mr. Donnell told me it would come from Cincinnati and that the Hall boys were making that door. Of course it was immaterial to me so long as it came up to specifications, but I understood it was coming from Cincinnati, made by the Hall boys.

Q. Since that time have you had any conversation or interview with anybody with reference to this matter in which you were asked to make an affidavit?

A. There was an attorney at the office about a month ago who asked me to call up to his office. I didn't know—I was busy—I had just come in,—I didn't know just what he wanted.

Q. Did he say who he was?

A. Yes; he was on La Salle street. I don't remember his name now—La Salle and Adams, up stairs, over Armour's.

Q. Home Insurance Building?

A. Home Insurance Building.

Q. Let me ask you this leading question, if you don't mind, Mr. Aldrich—was it the firm of Aldrich & McAuley?

A. McAuley, yes, sir.

Q. That was the attorney's name?

A. Yes, sir.

Q. Did you have any conversation with him about it?

A. Well, he asked me what I thought—they were having
188 some law suit with regard to the Hall Safe & Lock Company, the Hall-Marvin safe, and he tried to explain me the difference and he asked me whether, if I bought a certain brand and the brand was well known—if I got the brand, if I thought I got the right one. I told him, "Certainly, if I bought a certain brand and didn't get what I bought, that if I didn't get what I thought I would get, that I would look into it." He said, "If you will come to the office I can talk it over with you and explain some." I went to his office but I couldn't find him in, and I haven't been there since.

Q. Whom did he say he represented? What company did he say he represented?

A. I wouldn't say. He didn't give me to understand who he represented. He simply spoke about the Hall Safe & Lock Company. I really don't know. He didn't say who he represented at all.

Q. When you had this vault put in, you had it put in according to specifications, I understand.

A. According to specifications, so high and so wide and so much thickness.

Q. For so much money?

A. And specified how many plates, how thick, with drill-proof steel——

Mr. ALDRICH: I object to any statement as to what was in the specifications.

Mr. MERRICK: That may be stricken out.

Q. Have you the specifications with you?

A. No, I haven't them with me.

Q. Have you a copy in your office?

A. I may have. I don't know.

Q. If you have you will be willing to let us have them, will you?

A. Yes, sir.

Mr. ALDRICH: I will cross-examination when he brings in the specifications.

Testimony of H. E. Ambler.

H. E. AMBLER, produced as a witness in behalf of the complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name and residence, please?

A. My name is H. E. Ambler; my residence is 5816 Washington avenue, Chicago.

Q. And your place of business?

A. My place of business is with the Royal Trust Company of Chicago, Illinois.

Q. Are you a lawyer by profession?

A. I am.

Q. How long have you been admitted to the bar of this state?

A. About 12 years.

189 Q. Do you occupy any official position with the Royal Trust Company?

A. I am manager of its trust business.

Q. You are its trust officer?

A. Yes, sir.

Q. How long have you been with the Royal Trust Company?

A. About eight years.

Q. You have abandoned the regular practice now and are entirely devoted to that position, is that the idea, or are you still practicing?

A. I am still practicing, but my practice is almost entirely taken up by the Royal Trust Company's business.

Q. Do you know Mr. Donnell, of the Hall Safe & Lock Company of Chicago?

A. Yes, sir.

Q. How long have you know him?

A. Since 1898.

Q. Did you ever have any business on behalf of the Royal Trust Company, with Mr. Donnell or his company?
A. I did.
Q. With him personally or with his agents?
A. Both.
Q. To what did that relate?
A. To the purchasing of the vault lining, vestibule and vault doors of the Royal Trust Company when they established their new offices on the first floor of the Royal Insurance building.
Q. On Jackson street, in this city?
A. On Jackson street, Chicago.
Q. Will you state what conversation, if any, you had with reference to the manufacture or the origin of the materials and mechanism that went into the deposit vaults of that building for the Royal Trust Company?

Mr. ALDRICH: That I object to, as I assume there must have been a written contract with reference to this work, and I desire the production of the contract.

Mr. MERRICK: Was there any written contract with reference to this work, Mr. Ambler?
The WITNESS: My recollection is it was by conversation and by letters.
Q. Well, state the conversation——
Mr. ALDRICH: There were plans and specifications drawn I assume.
Mr. MERRICK: Well, were there or not?
The WITNESS: There were plans and specifications.
Q. Aside from the plans and specifications, were there any representations made to you verbally, by Mr. Donnell or any of his agents, as to who the Hall Safe & Lock Company was or from whence the material and mechanism that went into the construction of these deposit vaults came?
190 A. At the time we did business with them the firm was A. L. Deane & Company. Mr. Donnell was connected with that company. Our final contract for the construction was made with that company. They represented to us that they represented the Hall's Safe Company of Cincinnati—I think Cincinnati—and our contract was made with them on the basis of that representation. Just about the time the work was commenced A. L. Deane & Company became financially embarrassed, I understand, and from that time on our business was directly with the Hall Safe Company of Cincinnati; the vault was completed by them and has their name on the outside of it, and our settlement was finally made with them. Just about the time the vault was finished we found that we would need a silver safe, an extra silver safe in the vault, and we wrote directly to Cincinnati, asking whether they could furnish us with a safe, and they replied by letter referring us to the Hall Safe & Lock Company of Chicago, with which Mr. Donnell was connected.
Q. State whether or not there were any representations made by Mr. Donnell to you personally in this connection to the effect that

he was the representative or agent of the Hall Safe & Lock Company of Ohio?

A. No such representation was made at all.

Cross-examination by Mr. ALDRICH:

Q. What, if anything, was said as to when the business which he represented was founded?

A. I have no recollection of any statement of that kind being made.

Q. I understand you to say that the subject matter was discussed in correspondence and also that there were plans and specifications drawn for this work?

A. Yes, sir.

Mr. ALDRICH: I will conclude the examination when I have had an opportunity to examine those, which I will ask you to bring in.

Mr. MERRICK: Can you furnish the plans and specifications, do you think, Mr. Ambler?

The WITNESS: I am afraid not. That is a matter of five years ago.

Mr. ALDRICH: Mr. Donnell can, then.

Mr. MERRICK: Have you a copy of the plan*d* and specifications?

Mr. DONNELL: I think they have at the factory.

The WITNESS: We had Emil Strauss oversee all of the
191 construction for us, and the vault lining, vestibule and doors, were constructed, as I recollect, upon his plans and specifications.

Q. Who did he represent?

A. He represented us. He is an independent engineer here.

Q. Did you have any conversations with any other safe people on the subject of these vaults?

A. We did.

Q. Then it was a competitive job?

A. It was competitive work.

Q. Do you remember who the competing bidders were?

A. I remember only one, and that was the Mosler Safe Company.

Mr. MERRICK: Anything further, Mr. Aldrich?

Mr. ALDRICH: I would like those letters and specifications.

The WITNESS: I am afraid I will not be able to locate the specifications.

Mr. MERRICK: We may be able to locate them.

Whereupon the further taking of testimony in the above entitled cause was adjourned subject to notice.

WEDNESDAY, *November* 23, 1904—2 o'clock p. m.

Continuation pursuant to notice.
Present: Mr. Merrick, Mr. Aldrich.

Testimony of George English.

GEORGE ENGLISH, produced as a witness in behalf of complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name?
A. George English.
Q. Where do you live?
A. Wilmette, Illinois.
Q. In this county?
A. Cook County.
Q. What is your business?
A. Salesman.
Q. For whom?
A. Hall Safe & Lock Company of Chicago.
Q. How long have you been with that company?
A. About 5 years.
Q. Prior to that time what was your business?
A. Sir?
Q. Prior to that time what was your business?
192 A. Well, for a short time previous to that I was in the same business.
Q. With whom?
A. With the Trumbull Safe & Vault Company.
Q. What is the character of your business, are you a salesman or what?
A. Yes, sir.
Q. In the conduct of your business what do you sell chiefly; do you sell safes for office purposes, or bank work, vaults and things like that?
A. Anything in the line of the safe business.
Q. Have you made sales during the past five years for the Hall Safe & Lock Company of Chicago?
A. Yes, sir.
Q. Have you ever received any instructions from Mr. Donnell, the President of the Hall Safe & Lock Company of Chicago, or any other officer of that company, with reference to the representations you should make concerning the identity of that company with the original Hall Safe & Lock Company of Ohio?
A. My instructions were that I worked for the Hall Safe & Lock Company of Chicago and sold the product of the Hall Safe Company of Cincinnati.
Q. Did you ever receive any other instructions with reference to that subject except that?
A. That is the only thing I have ever done business on, on that basis.

Q. Have you ever made any representations of any kind with reference to the original Hall Safe & Lock Company of Ohio to prospective purchasers?

A. No, sir; that was something before my time and I could simply tell a person that this was the product of the Hall boys.

Q. In making such sales do you have any card with you that you use by way of introduction to your customers?

A. Yes, sir.

Q. And have you such a card with you?

A. Yes, sir.

(The witness then produced a card.)

Q. Let me see it. Is this the card that you have been in the habit of using and do use?

A. That is the card I use.

Mr. MERRICK: I offer the card in evidence.

(Said card is in words and figures as follows:)

193

Hall's Safe & Lock Co.

(Incorporated.)

Safes,

Vault and Safe Deposit Work.

52 & 54 Wabash Ave.

Chicago.

Telephone
Central 4517.
Presented by Geo. English. (Name written in ink.)

Q. Have you ever had occasion to notice any confusion as to the identity of the Hall Safe & Lock Company of Chicago with the Herring-Hall-Marvin Company's branch store in Chicago, in your business here since it was started here on Lake Street?

A. Yes, we had something of that kind occur, to this extent: I was handed a letter to go see a gentleman on Michigan Avenue and I took that letter—it was a letter of inquiry as to why he had not got a safe which he bought, and we had not received any notice or had any order up to that time. Mr. Donnell gave me that letter to go down and find out, make inquiries as to what it was, and I went down to see Mr. Cowan on Michigan Avenue——

Q. He had confused the two places, had he?

A. It seemed so, because——

Q. What makes you think there was confusion on the part of Mr. Cowan between the two places?

A. I asked him what the nature of this letter was; that as yet we had not got any order and what it was he wanted. He said he had ordered from one of our men this safe. Well, I said, "We know nothing of it." "Well," he said, "I don't think that is the way to

treat a person, I am in a hurry and want that safe." "Well," I said, "We will get it just as quick as we can for you." Time went on and the safe came here and it was delivered to him. He refused to accept it, stating at the time that he had already received one from the Herring-Hall-Marvin people which was shipped from their factory to him. Well, I said, "evidently there is a misunderstanding." Well, he said, "I will tell you, Mr. English, you have got that here, you keep it; in a few days I think I will want it. I will take it from you, and any more that I buy ever afterwards I will buy from you." That went on and a few days ago we got a letter stating that he would be glad if we would deliver him that safe.

Q. You needn't state the contents of the letter. All I
194 want is the confusion. Do you know of any other instances of confusion between these two establishments here?

A. That is the only one I can speak of where there was a confusion.

Q. In representing the Hall Safe Company of Chicago do you ever have occasion to state anything with reference to the original Hall Safe & Lock Company of Cincinnati, Ohio?

A. No. My method is simply, inasmuch as I believe competition is bad enough as it is, I don't draw in any more competitors than necessary. If a person was to ask that, of course I would have something to say.

Cross-examination by Mr. ALDRICH:

Q. You may give a list, as far as you are able, of the sales that you have made for the Hall Safe & Lock Company of Chicago?

A. For how long a time?

Q. During the five years that you have been making sales.

A. It would be impossible for me to give them to you from memory.

Q. Well, you can give some of them from memory?

A. Yes, sir.

Q. And if that isn't sufficient for my purpose I will ask you to bring in some.

A. Well, I can do that. I sold the Rumford Chemical Works a large safe in open competition with the Herring-Hall-Marvin Company.

Q. I didn't ask you anything about competition. I just want a list of the people you have sold.

A. All right. I will take it right in the down town district. I sold H. M. Richter & Company two safes; the Crown Stationery Company; H. W. Rogers Company; Purdy Company; George A. Schultz; Showers, Adcock & Teufel; John A. Robley & Sons; Illinois Commercial Travelling Men's Association; Louis Schaefer, jeweler; I sold the Barrios Diamond Company; I sold the Chicago Pulley Company, Charles Kuebel & Brothers; Roberts & Company, Wood & Company; E. P. Flint & Company. There is a pile of them, but it is hard to keep track of them.

Q. Had you been in the safe business prior to your engagement with Mr. Terwilliger?

A. I never was with Mr. Terwilliger.
Q. I thought you said you were with the Terwilliger Safe Company?
A. Trumbull Safe Company.
195 Q. With Mr. Trumbull then?
A. I never was in the safe business before I went there.
Q. How long were you with Mr. Trumbull?
A. Just a few months.
Q. Had the Hall Safe & Lock Company of Chicago been organized when you left Mr. Trumbull?
A. As far as I know it was just the same as it is now.
Q. About what time was this?
A. About five years I have been there.
Q. How long have you carried the card which you have produced here in evidence?
A. Well, I don't know that I have ever carried anything unless it was the script. The cards which I have carried always were, practically speaking, the same as that.
Q. What have you said to prospective customers, people with whom you have been negotiating about the Hall boys and their experience in the safe business?
A. That they had the best experience and that they had the best safe a man could build and that money could buy.
Q. What have you said to them about who they were, what their relations had been to the safe business?
A. I said they were the Hall boys that had been in the safe business practically speaking all their lives.
Q. How did you know that?
A. I heard it.
Q. From whom?
A. Well, general talk.
Q. From whom?
A. Conversations carried on between the safe men wherever we found them, and I was looking for information.
Q. Did you ever hear anything about it from Mr. Dean or Mr. Donnell as to who the Hall boys were?
A. I met both of the Hall boys here. He told me who they were.
Q. Who told you?
A. Mr. Donnell.
Q. What did he say about it, that is what I want to get at.
A. He said, "Those are the Hall boys." He introduced me to Mr. Hall.
Q. What did he tell you about how long they had been in the safe business?
A. He never said as to just how long they had been in the safe business. He said they were the men who run the factory.
Q. What did you tell people about how long they had been in the safe business?
A. What did I tell them?
Q. Yes.
A. I told them I was given to understand and heard it, that they

had been at the business all their lives. They were the Hall boys, sons of Joseph L. Hall.

196 Q. What did you know about Joseph L. Hall?

A. Nothing only what I heard.

Q. Did you tell people what you had heard about Joseph L. Hall?

A. I never told any more than was necessary.

Q. When it was necessary to effect a sale you told about the Hall boys?

A. Yes, sir.

Q. And about their father and so forth?

A. Yes, sir. They were sons of Joseph L. Hall.

Q. What did you tell them about Joseph L. Hall?

A. That was all.

Q. Well, didn't you tell them that Joseph L. Hall had been in the safe business too?

A. Not necessarily.

Q. If a person was intending to buy a safe, or you looked upon him as a prospective customer what meaning would a statement from you that the manufacturers of this safe were the sons of Joseph L. Hall have, unless you told them that Joseph L. Hall was himself a safe builder?

A. Well, anybody can infer what they please. I can't make any man believe anything; I don't try to. I got out to sell a safe. That is all that I want, and I believe when I do that I give him the best safe that is built. If men are practical, have been at it and make it as good as it can be made, how can it be better?

Q. I am not discussing the merits of safes at all. I am asking simply what would be the necessity of referring to Joseph L. Hall?

A. Well, people might ask, "Who are the Halls?" Here is the Hall Safe & Lock Company and we handle the product of the Hall Safe Company. Who is the Hall Safe Company? The Hall boys.

Q. Sons of Joseph L. Hall?

A. Yes, sir.

Q. What I am getting at is What has the fact that they are sons of Joseph L. Hall to do with it?

A. I don't know that it has anything to do with it.

Q. Do you know whether Joseph L. Hall was himself a manufacturer of safes?

A. Why, no, it was before my time.

Q. Well, you have heard so, haven't you?

A. Yes, sir, I have heard so.

Q. What, if anything, have you ever said to your customers about Joseph L. Hall having been a manufacturer of safes?

A. I have never said anything about Joseph L. Hall being a manufacturer of safes. I said the Hall boys were the sons of Joseph L. Hall.

Q. How long do you understand the Hall boys had been

197 in the safe business?

A. Well, I don't know. They were in business when I came there.

Q. From such information as you have acquired to enable you to talk to intending buyers, what has been your information as to the length of time they have been in the safe business?

A. All their lives, since they were able to work at the safe business?

Q. You have seen these advertisements in the newspapers and directories, that "The only Hall's safes are sold at the old stand, 52 Wabash Avenue" and so forth?

A. Yes, sir.

Q. How long have you seen such advertisements?

A. Well, I have noticed it some months at any rate.

Q. What does that mean, do you know?

A. I presume it means what it says.

Q. Namely, that only Hall's safes are sold at 52 Wabash avenue?

A. My inference is that the only safes made by the Halls are sold at 52 Wabash Avenue, sold in Chicago.

Q. You didn't talk that to your customers, did you?

A. Why shouldn't I?

Mr. MERRICK: That isn't the question. Did you or did you not, not why shouldn't you. Did you or did you not.

A. Why yes, I do. That is the only Hall safe made by the Hall boys.

Q. Do you, in making the statement to your purchasers, say that it is the only Hall safe made by the Hall boys or do you simply say that it is the only Hall safe?

A. I say this: It is the Hall safe, made by the Hall Safe Company; the Hall Safe Company is the Hall boys of Cincinnati, and I went even farther, if I might mention it: That we had nothing whatever to do in connection with the Herring-Hall-Marvin Company.

Q. I have understood you to say that competition was so strong in this business that you refrained from saying anything about the Herring-Hall-Marvin Company generally?

A. I didn't make any exception of them, any more than any others. I say there is enough competition without creating more.

Q. So as a rule you don't say anything about the Herring-Hall-Marvin Company, Diebold, or Mosler, or anybody else?

A. No, never, not unless I have to.

Q. What are your safes known as, what do you call them when you talk about them?

A. Hall's safes.

Q. I believe that is the sign you have up on your place of business, isn't it?

A. Hall Safe & Lock Company.

198 Q. Isn't there a sign also, Hall's Safes?

A. Hall Safe & Lock Company. There is a sign over the door, and I think it is Hall Safe & Lock Company on the windows and it may be Hall's safes.

Q. Is there a little sign up there looking like a safe, in the form of a safe?

A. Yes, it is just outside of the window.

Q. Do you recollect what is on it?

A. No, I don't, and I am there every day too.

Q. When you go out to see a customer for safes you tell him you want to sell him Hall safes, don't you?

A. No, I want to sell him a safe. My card speaks as to who I represent.

Q. I believe I heard you say just now that you call them Hall safes?

A. That is right. You said, "Do I want to sell him a Hall safe." I don't necessarily have to do that. I might go to a customer and sell him a vault door. A card is an introduction to me and lets me go in and I find out what the man wants, and I do business if I can.

Q. When you commenced your work with Mr. Donnell, Mr. Deane was alive, was he not?

A. Yes, sir.

Q. With which one of the gentlemen did you make your arrangements?

A. Mr. Donnell.

Q. Is he the man who had particular charge of the sales department?

A. That I couldn't tell you.

Q. Did he give you any instructions?

A. Yes, sir.

Q. What were they?

A. Whenever I wanted any I came to him, and whatever they might be he gave them to me.

Q. Well, what were the original instructions he gave you?

A. In regard to what.

Q. Your conduct as an agent, and what you should do?

A. I would get a catalog and prices and go out and sell safes.

Q. How long did he tell you he had been in business?

A. I don't know that he ever told me just how long. He said he had been at the safe business about thirty years.

Q. What do you understand them to mean by their statement, "the old stand"?

A. Well, that is the old stand. I would take it for granted that they wanted the public to know that they had not moved and got a new stand. I had a person ask me—he says, "George, you are getting over nearer to us, aint you?" I said, "Why?" He said, "Aint you right down here at Lake and Dearborn?" I said, "No." "Aint that the Hall Safe & Lock Company?" I said, "No, the Hall Safe & Lock Company is at 52 and 54 Wabash Avenue."

Q. You think both companies holding forth as Hall Safe
199 & Lock Company would lead many people to make a mistake, don't you?

A. I don't see how it would be otherwise, unless one is posted.

Q. How could they get posted?

A. Well, supposing you now—you are familiar with the details, if you wanted to go to 52-54 Wabash Avenue, you wouldn't go to Lake and Dearborn. If I were in the habit of doing business with you, you would go there, you wouldn't go somewhere else; so vice versa.

Q. If I wanted a Hall's safe or a Hall's standard safe, how would I find out where to go when there are two places, as I understand, one at 52 Wabash Avenue and the other at the corner of Lake and Dearborn?

A. If you came over to 52 Wabash Avenue they would sell you a Hall safe.

Q. I suppose anyone who knew nothing about it, as you and I do, who wanted to buy a Hall safe or a Hall's standard safe, wouldn't know which place to go to as things now stand, would they?

A. I can't tell. I can't tell what some people would do.

Q. I have understood you to say that necessarily two corporations or firms advertising themselves as Hall's Safe & Lock Company leads to confusion?

A. That is the natural inference isn't it?

Q. I think so. That is what Mr. Merrick here said in his bill.

Mr. MERRICK: There is no doubt about it, I guess.

Q. What would you do, Mr. English, if John Smith came into your store and said that he wanted to get a safe known as Hall's standard safe; would you sell him a safe, or would you send him to the corner of Lake and Dearborn Streets?

Mr. MERRICK: I object to the question as improper and immaterial as to what he would do.

A. There is another case of inference. You might infer what I would do.

Mr. MERRICK: You must answer the question, what would you do.

A. Why I would sell him a safe if I could.

Q. You wouldn't tell him anything about the fact that the business established by Joseph L. Hall was sold out to the Herring-Hall-Marvin Company and that company was the successor to Joseph L. Hall, would you?

A. I would tell him, if I might answer in my own way——

Mr. MERRICK: Certainly, answer in the way you like.

200 A. (continued). —that these safes were made by the Hall boys and the best safes built. Now, you can call it what you have in mind to.

Redirect examination by Mr. MERRICK:

Q. You were interrogated about different sales you made and different people; these sales were made by you as safes made by the Hall Safe Company of Cincinnati?

A. They were made by the Hall Safe Company and the goods they bought were made by the Hall Safe Company of Cincinnati.

Testimony of Fred Schrauder.

FRED SCHRAUDER, Produced as a witness in behalf of complainants, having been first duly sworn, was examined in chief by Mr. Merrick and testified as follows:

Q. What is your name?
A. Fred Schrauder.
Q. Where do you live, Mr. Schrauder?
A. 4648 Indiana Avenue.
Q. Chicago?
A. Yes.
Q. What is your business?
A. I am in the safe business as a salesman of bank work.
Q. For what company?
A. For the Hall Safe & Lock Company.
Q. Of Chicago?
A. Of Chicago.
Q. That is the concern Mr. Donnell is president of?
A. Yes, sir.
Q. How long have you been in the safe business generally?
A. Thirty-four years.
Q. Where did you begin in the safe business?
A. In Cincinnati, Ohio, with the Hall's Safe & Lock Company.
Q. How long have you known Mr. Donnell?
A. Thirty-four years.
Q. Where did you become acquainted with him?
A. I knew him when he was also engaged with the Hall's Safe & Lock Company of Cincinnati, Ohio.
Q. Did you know Mr. Deane in his lifetime?
A. Yes, sir.
Q. When he and Mr. Donnell were trading together as partners under the firm name of A. L. Deane & Company?
A. Yes, sir.
Q. Were you in their employ at that time?
A. I was.
201 Q. And how long had you been in the employ of A. L. Deane & Company and of the Hall Safe & Lock Company of Chicago?
A. About fifteen years.
Q. Do you know about the construction of safes as a safe man, as an expert?
A. Yes, sir.
Q. Do you know how they are made?
A. Yes, sir.
Q. Do you ever have anything to do with the construction and manufacture of safes?
A. Well, I did more or less in Cincinnati, Ohio, and have had here in Chicago with A. L. Deane & Company and the Hall Safe & Lock Company.

Q. Were you with A. L. Deane & Company in 1892, before the World's Fair?

A. Yes, sir.

Q. Do you know whether at that time they were selling the manufacture of the Ohio corporation known as Hall's Safe & Lock Company?

A. Yes, sir.

Q. And after that as a matter of fact they sold the safes made by the Herring-Hall-Marvin Company, did they not?

A. Yes, sir.

Q. What was the reputation, if you know, of the Hall Safe & Lock Company's safes at or about that time, say in 1892, when the Herring-Hall-Marvin Company began to sell and make safes?

A. It was rather bad. Their safes had been extensively burglarized throughout the *company* and their reputation was by no means good.

Q. That is the Hall's Safe & Lock Company's safes?

A. The Hall's Safe & Lock Company's safes.

Q. What was the construction at that time of the Hall's Safe & Lock Company—what would you call it?

A. Well, I speak of their burglar proof safes now especially. They were made of alternate plates, of soft and hard steel, known as Crone steel. These plates were fastened together with what is known as conical bolts and the door frame- were dovetailed, and of course this construction of dovetails was strong against former methods applied by burglars, such as wedging and so forth, where they used tools——

Q. Jimmies and things of that kind?

A. Yes, sir; but after they began to use nitro-glycerine these dovetailed doors couldn't be made to fit tight, and consequently the nitro-glycerine was introduced into the crevices about the doors, and when confined it was perfectly natural that the door and the door jambs should be blown to pieces, and expert burglars attacked them first and then they were burglarized quite often afterwards by what we call hobos, men who are not really experts but have the cour-
202 age to use nitro-glycerine and take their chances, and they were successful to that extent, that whenever there was a burglary the Hall Safe became the laughing stock of the safe fraternity, and they assumed at once that it was a Hall safe, and I have been called upon on numerous occasions to go to see banks and interview them where they had had their safes burglarized, and see what I could do toward fixing the matter up, and as we had nothing different to offer, I usually suggested that they buy a burglar-proof safe, such as they had, and put it into what we call a casing and set it outside of the vault instead of placing it inside, and usually—of course we were making an effort to restore the reputation of the Hall Safe & Lock Company, and sometimes I was successful in making the sale and getting some kind of a letter from the bank helping us out a little.

Q. Since when, if you can state, has the Hall's Safe & Lock Company of Ohio ceased doing business as such?

A. I think it was about 1892, when they amalgamated with the Herring-Marvin Company and Farwell Company of Philadelphia, Herring-Marvin of New York and Farwell of Philadelphia, when it became known as Herring-Hall-Marvin Company. I think 1892 is about the time that occurred.

Q. Do you know when the Hall Safe Company began the manufacture of safes?

A. I think that must have been about 1896.

Q. Do you know the men that are connected with the Hall Safe Company of Cincinnati?

A. Yes, sir.

Q. Who are they?

A. Ed Hall and Harry Hall and the Hall boys' brother-in-law, I can't now recall his name.

Q. Kemper?

A. Yes, Kemper, that is it. Then C. O. Hall, one of the brothers—I don't think he is financially interested, but he is actively interested, in fact has considerable responsibility in connection with the firm.

Q. Those are the boys we have heard spoken of in this case as the Hall boys?

A. Yes, sir.

Q. And they are the ones that operate, own and control the Hall Safe Company of Cincinnati?

A. Yes, sir.

Q. And have those safes been sold by the Chicago concern here, Mr. Donnell's Company, the Hall Safe & Lock Company of Chicago?

A. Yes, sir, they are being sold, both now and have been for some time.

Q. Has there been any change made in the construction
203 of safes since the dovetailed method of construction that you speak of?

A. Yes, sir.

Q. What is the essential difference, in plain language?

A. The dovetails have been entirely abandoned as well as the conical bolts, and the safes are now built—the plates are built to go from the outside in, in other words the screw fastens two plates, goes through this plate and into the other one and so on, and the dovetails have been abandoned; the doors are round, smooth, so as to fit tight into the door frame to prevent the introduction of explosive materials.

Q. Making them more burglar proof?

A. Making them more burglar proof against present appliances.

Q. Is that the construction of the safe now made and that had been made the last five years, we will say, by the Hall Safe Company of Cincinnati?

A. Yes, sir.

Q. And what is the reputation of that safe in the trade?

A. Well, it is good now. The Hall Safe Company's reputation is good.

Q. And has been good ever since they changed the construction?
A. Ever since they changed the construction.
Q. Now, you are employed as a salesman, you say?
A. Yes, sir.
Q. Do you sell safes or bank work and vault linings and things of that kind or both?
A. I sell principally vault linings and bank safes; occasionally, when the opportunity presents itself without hunting for it, I sell fire proof safes, but not many. My principal work is among banks and financial institutions.
Q. In making these sales do you receive any instructions from Mr. Donnell with reference to any representations about the old Hall's Safe & Lock Company.
A. Personally I do not.
Q. Do you make any such representations, if so, what do you say, to intending customers?
A. That question has in recent years, since I have been connected with the present Hall Safe & Lock Company of Chicago—I suppose they thought I was perfectly familiar with the safe business and therefore it never occurred to them to say anything to me, but the subject has been broached to me on the part of customers sometimes and I have told them that we were the Hall Safe & Lock Company of Chicago and we are selling the Hall Safe Company's safes—the Hall Safe Company of Cincinnati; that formerly there was a firm styled Hall Safe & Lock Company which went out of existence when
204 the combination was formed of the Herring-Hall-Marvin Company. Then the Hall boys were connected with that concern, but they finally got out of it entirely and started a new concern under the name of the Hall Safe Company, and that when the Herring-Hall-Marvin Company gave up the charter or abandoned the name of Hall's Safe & Lock Company, that this Hall Safe & Lock Company of the State of Illinois was formed, and that would explain the circumstances as to the name of the Hall's Safe & Lock Company and Herring-Hall-Marvin Company. I have always endeavored to make that clear when I have been asked. Usually safes are sold—well, now, for instance, if I go out into the country to solicit banks they will buy more on account of the man's knowledge and ability to explain the work than — will on the reputation of the house, although of course some times if the reputation of the house is bad, why, the man's influence may not be great enough to overcome that, and if the reputation of the house is very good it facilitates matters for the man, but usually the selling ability depends on the agent. That has been my experience.
Q. And the product, I suppose, itself?
A. Well, of course he has got to explain the style of construction of the product, and if that looks reasonable and feasible and mechanical, why, then, matters are facilitated for him.

Cross-examination by Mr. ALDRICH:

Q. Mr. Schrauder, I suppose that you mean by your explanation as to the success of burglars with the Hall safe to say, in effect that

the skill of the criminal element about keeps pace with the skill of the manufacturer, does it not?

A. Pretty near; it is pretty close.

Q. And methods that are found adequate at one time to baffle the skill of the criminal are, with scientific improvements adopted by the criminals, found to be later inadequate?

A. Yes, that is true, to a certain extent.

Q. A great many changes have been made necessary by reason of that fact, have they not?

A. Yes.

Q. And this change in safe construction was brought about through the adoption by the criminal element of the use of high explosives?

A. Yes.

Q. Instead of mere burglar proof?

A. Yes, sir.

Q. It was an objection that applied to other safes besides the Hall's also, was it not?

A. Not to such an extent as to the Hall safes. And then let me say also that there were a great many Hall safes in use, too.

205 Q. The business had been established for a great many years, hadn't it?

A. Yes.

Q. It was one of the most extensive safe businesses in the world, was it not?

—. ——.

Q. Have you any knowledge as to what was paid for the business when it was taken over in 1892 or 1893?

A. No, sir.

Q. What safe company first adopted what you have described on the record as an improved method of construction?

A. Well, the Diebold Safe Company and the Hall Safe Company.

Q. Which Hall Safe Company?

A. The new Hall Safe Company. There is but one Hall Safe Company. There never has been but one Hall Safe Company.

Q. Have the Mosler Company adopted that improved method of construction?

A. Well, they made a different kind of safe. They didn't make a square door safe. They made what is known as a screw door safe, a round door. They couldn't use the same—for instance they couldn't use tongue and groove on their door, because it had to screw in.

Q. I read you from the bill sworn to by Mr. Donnell in this case: "Your orator further represents that Hall's safes were first manufactured by Joseph L. Hall at or near Cincinnati, Ohio, *or on* about the year 1854, and that since said time the said Joseph L. Hall or his sons, either individually or as managers of corporations in which the personal or family name of Hall appears, have been engaged in the manufacture of safes, and the name Hall has by reason of such long business experience acquired and now enjoys the highest reputation in the safe business. That safes so manufactured and labeled are known to the trade and to the public as safes of the highest type

of construction, durability, efficiency and character for the purposes for which safes are manufactured, to wit, the preservation from fire and theft of money and personal property of great value."

Are the statements contained in that paragraph true, in your opinion?

A. Yes, sir.

Q. Were they true in 1860, do you think?

A. 1860?

Q. 1860, yes.

A. Well, that is before my experience. I started in 1870, but I believe they are true from what I learned afterwards.

Q. Were they true in 1870?

A. Yes, sir.

Q. And in 1880?

A. Yes, sir.

206 Q. In 1890?

A. No, sir, not as to the burglar proof quality. The fire proof quality has always been all right, but as to the burglar proof quality, no

Q. You think Mr. Donnell in his statement—

"The name Hall has, by reason of such long business experience, acquired and now enjoys the highest reputation in the safe business; that safes so manufactured and labeled are known to the trade and to the public as safes of the highest types of construction, durability, efficiency and character for the purposes for which safes are manufactured,"

is in error in that respect as to the period of 1890 to 1896?

A. No, he is not. The word as connected with the safe business —Hall—the name Hall, is better known throughout the United States and certain parts of other countries than any safe which has ever been manufactured. The quality of their fire proof safes has never deterio-ated, but there was a time when their burglar proof safes were not up to the standard, that is to say when they did not resist the appliances that were used against them then; that is I mean explosives, but so far as any of the other safes made by them are concerned they have always enjoyed the highest reputation, and the name Hall is better known today than any other name in connection with the safe business. That I believe to be true.

Q. Who made the name well known?

A. Well, Mr. Joseph L. Hall, in particular, and assisted by a man by the name of O. Y. Cone. He is the man who inaugurated the branch houses throughout the country, as here in Chicago, New York, Boston, San Francisco and so forth. He was the vice-president at the time that I was connected with them in 1870—of the company—and he assisted very materially in establishing the reputation of the Hall's Safe & Lock Company, although Joseph L. Hall, of course, was the manager, at the head of the concern.

Q. And it is a fact, is it not, Mr. Schrauder, that the products of that business were known as, "Hall's safes" and "Hall's standard safes" not only throughout this country but throughout the civilized world, practically?

A. Why, practically, yes, I won't say throughout the civilized world, because that isn't true, but people familiar with the safe business throughout the civilized world knew the name Hall in connection with the safe business.

Q. And what was that product called?

A. At the time I was first connected with them in 1870, and I think until 1892 it was known as the Hall's Safe & Lock Company work.

207 Q. That was the name of the corporation?

A. Yes.

Q. I ask you what the name of the product itself was called; wasn't it called "Hall's safes"?

A. Yes, sir.

Q. "Hall's standard safes"?

A. Hall's safes, yes. The word "standard" has recently come into use. That is comparatively recently.

Q. Well, within what period?

A. Oh, probably ten or twelve years or fifteen years, something like that.

Q. It was well known and in use in 1890, wasn't it?

A. Yes.

Mr. MERRICK: What was well known? Do you mean standard?

Mr. ALDRICH: Hall's standard safes.

The WITNESS: The word "standard" you mean?

Q. Yes. "Hall's standard safes"?

A. I couldn't say as to the word "standard." "Hall's safes"—what make of safe do you represent? "Hall's." "All right, we know that we have heard of it; we know the name Hall in connection with the safe business," but the word "standard," that is of a more recent adoption, and I don't think even today if you were to interview a man that he would ask you, "Do you represent Hall's standard safes?" The word "standard" I don't think would be used, but "Hall's safes, the name Hall—yes, that is popular.

Q. That was true in 1890 and up to 1896?

A. Yes, it has been——

Q. It has been true all the time?

A. Yes, all the time, that the Hall Safe & Lock Company was in existence, until their burglar proof safes began to be robbed. Then they lost largely among bankers, their reputation in that respect, but outside of the bank safes it didn't interfere with their name.

Q. And during all of this period of time, from the time that Joseph L. Hall had made the business a success, the words "Hall's safes" have been well known?

A. Oh, yes, sir.

Q. With anyone who knew anything about the safe business?

A. Yes, certainly.

Q. And those words stood for the product of the Joseph L. Hall factory up till the time of the formation of the Hall Safe Company by the Hall boys, did it not?

A. Yes, sir.

Q. When we talk about Hall's safes now what does it mean?

A. Well, I don't know that I get your meaning exactly—what does it mean?

Mr. MERRICK: When you speak of a "Hall's safe" whose manufacture do you have in mind is what he asks.

208 The WITNESS: Well, you have to buy the safes manufactured by the Hall boys, the Hall Safe Company.

Q. You represent in your safes, that that is the only Hall safe, do you not?

A. Well, I represent that that is the only Hall safe made with which anybody by the name of Hall has any connection.

Q. You have just said that "Hall's safe" had come to be so well known that everybody understood what it meant?

A. Yes.

Q. In 1890 and subsequent to that time?

A. Yes.

Q. It is still well known and everybody knows what it means, do they not?

A. The majority of people don't know that there has been any change.

Q. When you go to people to sell them a safe and you are asked "What make or manufacture do you represent," what do you say?

A. I say I sell the Hall Safe Company's safe.

Q. Are you particular to say "I sell the Hall Safe Company's safes?"

A. Yes, sir.

Q. Or don't you say that "I am selling Hall's safes?

A. No, I am particular to say that I am selling the Hall Safe Company's safes.

Q. Since the establishment, then of this new business known as the Hall Safe Company by the Hall boys, the term "Hall safes," concerning which we have been speaking has come to mean a different thing than it did prior to the establishment of that company, has it?

A. In this sense, yes—in this sense: That the safes are made by the parties who were originally connected with the old Hall Safe & Lock Company, by the parties who were originally connected with the old Hall's Safe & Lock Company, there is where there is a distinction and they are the only parties that are manufacturing the safes as originally manufactured by the Hall's Safe & Lock Company, with the exception of the burglar proof work that has been changed.

Q. When you meet an intending purchaser of safes and talk to him about Hall safes, what, if anything, do you say to him about Joseph L. Hall?

A. I don't have any occasion to say anything about Joseph L. Hall.

Q. Do you say you never have said anything about Joseph L. Hall?

A. Oh, yes, I have, only recently there was a party who came into the store and he says, "Well, I thought you had moved, but I see you are still here." He says, "What does this mean? On Dear-

born and Lake Street I passed by and saw a safe store, and I
209 looked at the sign on the outside and I saw 'Hall's Safe &
Lock Company, Herring-Hall-Marvin Safe Company, successors,' and on the front door 'Hall's standard safes.'" Well, now, he says, "How is that?" Well, I said, "Some years ago the old Hall's Safe & Lock Company formed a combination with Herring and Marvin of New York and Farwell of Philadelphia and they became known as the Herring-Hall-Marvin Company and Edward Hall was the manager of that company. Since that the Hall boys have entirely withdrawn from the Herring-Hall-Marvin Company." I told him that the Herring-Hall-Marvin Company had gone into the hands of a receiver and since then the company was known as the Herring-Hall-Marvin Safe Company and that the Hall boys were now manufacturing safes under the firm name of the Hall Safe Company and that when the Hall people, the Hall's Safe & Lock Company went out of existence, that the firm of A. L. Deane & Company here secured a charter under the laws of the State of Illinois for the Hall's Safe & Lock Company; that we were agents for the Hall Safe Company of Cincinnati. That is the explanation I made to that particular man, and I have had occasion several times since to make the same explanation to parties who have asked me for information regarding these two firms, apparently, or three, Hall's Safe Company, Hall's Safe & Lock Company, Herring-Hall-Marvin Company, using the name of Hall's Safe & Lock Company. That is my explanation to them and that is just as I understand the facts to exist.

The firm of A. L. Deane & Company, when the concern here was Hall's Safe & Lock Company and run by the Cincinnati firm—that I can recall away back—I used to examine the reports of the branch houses in Cincinnati—A. L. Deane & Company bought out the Hall's Safe & Lock Company here, bought everything there was here that belonged to the Hall's Safe & Lock Company and they run under the name of A. L. Deane & Company until they secured this charter for the Hall Safe Company. That is the explanation I furnish when anyone asks me.

Q. And the occasion for explanation has arisen a number of times?

A. Yes, sir, a few times.

Q. In the absence of any call for explanation you would represent that you are selling Hall's safes, would you not?

A. I represent that I am selling the Hall Safe Company's safes, to be exact.

210 Q. Are you always exact, that is the point?

A. I have to be; I have to be as near as possible.

Q. I assume so, on the witness stand of course, but what I want to know is, when you are talking about it, do you cut it short by representing that you are selling Hall safes?

A. No, I don't. I deal with bankers principally and I make it a point to be very exact with them, because my competitors make it a very serious point to lie all they can about us, and therefore I am extremely careful in what I say about ourselves as well as about

them. I have been in the business so long that I know they will assail your company and will assail you—that is unfortunate—personally, if they have the opportunity to do so—do anything they can to belittle you personally as well as your product and as well as the company. That is the reason that I am careful.

Q. There has been read into the record a number of advertisements by your house at 52 Wabash Avenue, in substance as follows: "Caution (in large letters) the only safes made by the Halls are sold at the old stand, 52-54 Wabash avenue."

A. Yes, sir.

Q. Have you seen such advertisements?

A. Yes, sir, I have seen them.

Q. Have you ever talked with anybody about that advertisement?

A. No, sir.

Q. Do you know why that word "Caution" is used there?

A. Well, I can imagine why it is—because the other firm here, the Herring-Hall-Marvin Company assume that they are selling the Hall standard safes, and therefore, Mr. Donnell finds it advisable to caution the people that he is selling the only Hall's safes made by the Halls, by the Hall boys, inasmuch as there are no Halls connected with the Herring-Hall-Marvin Company. That is my interpretation of it.

Q. What is the old stand?

A. The old stand is 52 Wabash avenue.

Q. Old stand for what?

A. For the Hall safes. This establishment here has only been opened a short time, and they never, to my knowledge, used the sign of Hall's Safe & Lock Company, Herring-Hall-Marvin Company successors before. I never heard of that being used in that way.

Q. Speaking of the old stand, you say, for Hall safes, that was at a time when the business was conducted by the Hall's safe & Lock Company of Cincinnati with Joseph L. Hall as president——

211 Mr. MERRICK: No, he is referring to this new place down here.

Mr. ALDRICH: No, you misunderstand me, Mr. Merrick.

Q. Aren't you?

A. No, he asks me—he speaks about this advertisement, "Caution: The only Hall safes made by the Halls are sold at the old stand." He wants to know where the old stand is. I tell him at 52 Wabash Avenue. Why? Because it is from there that the Hall safes have always been sold since they moved there. "The old stand"—we were selling the Hall Safe & Lock Company's safes and I think Mr. Joseph L. Hall, no, he died before we moved there and we were selling the Hall safes from that point and they were the only Hall safes sold then and are the only Hall safes being sold now, manufactured by Halls. That is the reason, I suppose, he uses that word. The Hall Safe & Lock Company have not conducted their own business since they were located on Dearborn Street. They were located I think at 77 Dearborn Street, when Deane and Donnell bought out the establishment, and from there they moved to 52 Wabash Avenue, and that is the reason they call it the old stand.

Q. I would think it would lead to a good deal of confusion in having Hall's safes advertised from 52 Wabash Avenue and also from the corner of Lake and Dearborn.

A. The Hall's safes have always been advertised from 52 Wabash Avenue, and with a perfect right, and it is only a few months comparatively—I don't know just how long—since these people came here and tried to tell the public that they were the Hall Safe & Lock Company. I think if there is anything misleading about it they are the ones to blame. We haven't tried to mislead them. We have always been the Hall Safe & Lock Company.

Q. Well, such conduct, whether right or wrong, does lead to confusion, does it not?

A. Well, so far as these other parties are concerned I do think that they are confusing the public. So far as the Herring-Hall-Marvin Company are concerned, I do think that they are confusing the public.

Q. I didn't ask you to say which is right in this controversy at all. I am simply asking whether the fact that Hall's safes are advertised from two different establishments in that way, each claiming to be the ones that have a right to sell the Hall's safes, does not confuse intending purchasers, isn't that the necessary effect?

A. Yes, I should say it is.

Q. One or the other of those two people ought to stop it, oughtn't they?

A. Well, it would appear to me so.

212 Q. Did you have any talk with Mr. Donnell about the time that A. L. Deane & Company failed and the Hall Safe & Lock Company of Chicago was organized?

Mr. MERRICK: I object to it as not cross-examination. Go ahead, Mr. Schrauder.

A. When A. L. Deane & Company failed I had some bank orders in and we talked about them a little, but nothing further.

Q. You were in the service of A. L. Deane & Company?

A. Yes, sir.

Q. Were you out of employment for a little time?

A. I was after they failed, yes.

Q. When did they first advise you that they were going to resume business as a corporation?

A. They didn't advise me. I knew it without being advised by them, from what I heard.

Q. From whom did you get the information?

A. Why, from other employés that were re-engaged with them.

Q. You must have had some talk with reference to again coming into their service?

A. Oh, well, after—yes, after I re-entered their employ, naturally I had some talk with them.

Q. What reason was given for adopting the name Hall's Safe & Lock Company?

A. I didn't ask them and they didn't volunteer any information.

Q. You had no knowledge on that subject?
A. No.

Adjourned subject to notice.

Testimony taken in behalf of cross-complainant and defendant, at the law offices of Maxwell & Ramsey, in the City of Cincinnati, State of Ohio, beginning on Wednesday, December 28, 1904, at the hour of 12 o'clock noon, by George W. Burgoyne, Examiner, pursuant to agreement heretofore made by counsel for the parties hereto:

Testimony of Richard T. Pullen.

RICHARD T. PULLEN, produced as a witness in behalf of cross-complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. ALDRICH:

Q. You may state your name, business and occupation.
A. Richard T. Pullen; I am acting president of the Herring-Hall-Marvin Safe Company; manufacturer of safes, vaults and
213 general appurtenances pertaining to that line of business.
Q. How long have you been connected with the manufacture of safes and safe materials?
A. Since February 11, 1874.
Q. To what companies and properties did the Herring-Hall-Marvin Safe Company succeed?
A. The Herring-Hall-Marvin Safe Company took the property over from the receivers, George R. Gray and Wright P. Pounall, the receivers of the Herring-Hall-Marvin Company.
Q. And that, through various conveyances to which I will refer later, embraced the property and assets of a company known as the Hall Safe & Lock Company of Ohio, did it not?
A. Yes, sir.
Q. Had you any connection with that company during its existence?
A. Yes, sir.
Q. What connection?
A. Well, in different capacities; latterly as a director and as secretary of the company.
Q. Did you know Joseph L. Hall in his lifetime?
A. I did, sir, very well. He is my father-in-law.
Q. For how many years had you known him?
A. I had known Mr. Joseph L. Hall since back in the latter part of the '60's.
Q. Was his business incorporated at the time you first became acquainted with him?
A. Yes, sir.
Q. Under what name?
A. Hall Safe & Lock Company.
Q. Was that an Ohio corporation?
A. Yes, sir.

Q. Are you acquainted with the history of the foundation of that business?

A. Not from personal relationship; simply from such information as would come to me from——

Q. You know as a fact, do you not, that the business was originally established by Joseph L. Hall in his lifetime?

A. The Hall Safe & Lock Company, yes, sir, and his associates. He had some one operating in connection with him.

Q. Are you able to state at what time the Hall Safe & Lock Company of Ohio was organized?

A. It was in 1867. I couldn't state the month or the day.

Q. Prior to that time under what name had the business been conducted?

A. Joseph L. Hall & Company, Hall, Dodd & Company and Hall, Carroll & Company, and I think E. Hall & Company.

Q. Running back, if you know to what time?

A. Back into the forties.

Q. And by what name had the product of these several
214 business corporations and firms been known?

A. The product of the Hall—the Hall product?

Q. Yes.

A. The Hall product.

Q. That name was always used in connection with the product?

A. Yes, sir.

Q. In speaking of safes made by these various firms or corporations what did they call them?

A. As a general thing Hall Safes. Of course, designating the different degrees, the style and so forth, but Hall's safes would cover it in the early period and later the words "Hall's Standard Safes" were established and largely used.

Q. During what period was this the fact?

A. Ever since my connection with the company, beginning in 1874.

Q. You may state in a general way the character and extent of the business of the Hall Safe & Lock Company, whether large or otherwise.

A. It was a very extensive business, the largest safe manufacturing industry I think in the world.

Q. Where did they carry on the business?

A. Its factory was located in Cincinnati, Pearl and Plum Streets and the ramifying district around there, with branch houses in many leading cities.

Q. And was the product sold only in the United States?

A. No, sir.

Q. Or sold generally throughout the world?

A. Generally, yes, sir.

Q. This was so at the time, as I understand you, that you first became connected with the business?

A. Its export trade at that time was limited, but generally throughout the United States at that time.

Q. The business had become a large one prior to the time you became connected with it?

A. Yes, it was an extensive business at that time.

Q. I understand that a conveyance was made by the Hall Safe & Lock Company to some other parties. Have you a copy of that conveyance?

A. Yes, sir.

Mr. ALDRICH: Let the record show that the witness produces a conveyance from the Hall Safe & Lock Company to Jennings S. Cox and Anson G. P. Segur, a bill of sale, dated the 12th day of May, 1892, a copy of which is marked Cross-Complainant's Exhibit 1.

Mr. MERRICK: Mr. Aldrich, is this the original copy you have pleaded in your bill as cross-complainant?

Mr. ALDRICH: Yes, that is the original.

215 Said document was thereupon introduced in evidence by counsel for cross-complainant, was marked Cross-Complainant's Exhibit 1, G. W. B., and is as follows:

CROSS-COMPLAINANT'S EXHIBIT 1.—CONVEYANCE OF MAY 12, 1892.

CROSS COMPLAINANT'S EX. 1. G. W. B.

Know all Men by these Presents, That Hall's Safe and Lock Company, a corporation organized and existing under and pursuant to the laws of the State of Ohio, doing business at the City of Cincinnati, in the County of Hamilton and State of Ohio, party of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States and for other valuable consideration which are more fully stated and set forth in an agreement of even date herewith, made and entered into by and between the parties to this instrument, the receipt of which is hereby acknowledged and the parties of the second part, their heirs, executors, administrators and assigns are forever discharged therefrom, has bargained and sold, and by these presents does grant, bargain, sell and convey unto Jennings S. Cox, of the City, County and State of New York, and Anson G. P. Segur, of the City of Brooklyn, County of Kings and State aforesaid, parties of the second part, and unto their heirs, executors, administrators and assigns forever, all and singular its manufacturing plant, machinery, tools, patterns, buildings, fixtures, leasehold interests, stocks of safes and other merchandise, material, manufactured, unmanufactured and in process of manufacture, horses, wagons, vehicles, cartage plant and rigging, bills receivable, book accounts, moneys, debts, dues, books of account and other books, papers, office furniture, trade-marks, patent rights, trade rights, good will, and all its property and assets of every name and nature, wheresoever situated, as the same exist at the time of the delivery of these presents; To Have And To Hold the same unto the said parties of the second part, their heirs, executors, administrators and assigns forever.

And said Hall's Safe and Lock Company, party of the first part, does hereby, for itself and its successors, covenant, promise and agree to and with the said parties of the second part, to Warrant And Defend the sale of the said property hereby sold, unto said parties of the second part, their heirs, executors, administrators and assigns, against all and every person or persons whomsoever.

216 And said Hall's Safe and Lock Company, party of the first part, does hereby covenant, promise and agree to and with said parties of the second —, their heirs, executors, administrators and assigns, that the property and assets of said Company, as existing at the time of the execution and delivery of these presents, and as hereby sold and conveyed, embrace and include all the property and assets of every description of said Hall's Safe and Lock Company, as the same existed on the thirtieth day of June in the year eighteen hundred and ninety-one, and which appeared by and were shown upon the books of said Hall's Safe and Lock Company at said last mentioned date, except only as said assets and property have been changed or varied in the ordinary course of business.

And said Hall's Safe and Lock Company does further hereby covenant, promise and agree to and with said parties of the second part, their heirs, executors, administrators and assigns, that said assets and property of said Hall's Safe and Lock Company have not in any wise been diminished or impaired since said thirtieth day of June, eighteen hundred and ninety-one, and that said property and assets as the same are hereby conveyed, are in all respects equal in value to the assets and property of said Company as the same existed on the thirtieth day of June, eighteen hundred and ninety-one, and as appeared on the books of said Company at that date.

For greater certainty a condensed statement of certain of the assets and property of said Hall's Safe and Lock Company and the values thereof, as the same were shown by its books on the said thirtieth day of June, eighteen hundred and ninety-one, is hereto annexed, marked "A," and the same shall be taken and deemed to be a part of these present.

And in consideration as aforesaid, said Hall's Safe and Lock Company, has sold, and does hereby grant, bargain, sell and convey unto said parties of the second part, their executors, administrators and assigns, all and singular the increase, profits and net earnings of the business of said Hall's Safe and Lock Company subsequent to said thirtieth day of June, eighteen hundred and ninety-one, and said Hall's Safe and Lock Company does hereby covenant, promise and agree to and with said parties of the second part, their heirs, executors, administrators and assigns that it will well and truly account to said parties of the second part for and pay over to them or their assigns the whole of said increase, profits and net earnings made or to be made since last mentioned date, and in lieu

217 thereof, said Hall's Safe and Lock Company shall accept and withdraw the sum of eighty-six thousand six-hundred and twenty-five dollars, as the exact amount of such profits cannot conveniently be ascertained at this date, to which there shall be

added the further sum of two hundred and sixty-two dollars and fifty cents for each day's delay upon the part of the parties of the second part, after the first day of June, 1892, in completing the purchase of the property hereinbefore mentioned and intended to be conveyed hereby.

It is Hereby Expressly Understood, Covenanted and Agreed that the business of Hall's Safe and Lock Company is purchased and taken over by the parties of the second part in all respects as a going concern.

In consideration as aforesaid, the said Hall's Safe and Lock Company does hereby guarantee the payment of all and singular the unsecured debts, dues, accounts, bills receivable, and obligations for the payment of money owing to said Hall's Safe and Lock Company, and which are herein sold and conveyed or intended to so be, and each and every of the same, And said Hall's Safe and Lock Company does hereby covenant and agree that it will execute and deliver to the parties of the second part, or to their assigns, any other or further instrument or instruments of guaranty with respect to the payment of the same or any part thereof, as by said parties of the second part or their assigns may at any time or times hereafter be reasonable required.

It is Expressly Understood and Agreed that certain apparent overdrafts which upon the books of the said Hall's Safe and Lock Company appear to be due and owing to the said Company from Edward C. Hall, Richard T. Pullen and William H. Hall, said apparent overdrafts not exceeding in the aggregate the sum of Nine thousand (9,000.00) dollars, shall not be deemed or treated as assets of said Hall's Safe and Lock Company which are hereby sold and conveyed, nor shall said persons, or either of them be required to pay such apparent overdrafts; but this provision shall not apply to any overdrafts of said persons or any or all of them exceeding in the aggregate the sum of Nine thousand (9,000.00) dollars.

In consideration as aforesaid said Hall's Safe and Lock Company does hereby covenant, promise and agree to and with said parties of the second part, their executors, administrators and assigns, that all and singular its goods, chattels, assets and property of every name and nature hereby conveyed or intended so to be, are at the time of the execution and delivery of these presents, free, clear and discharged of and from any mortgage, lien or other encumbrance whatsoever.

And in consideration as aforesaid, said Hall's Safe and Lock Company does hereby promise, covenant and agree to and with the parties of the second part, their executors, administrators and assigns that it, said Hall's Safe and Lock Company will make, execute and deliver, either to said parties of the second part, or to their assigns, all other and further instrument or instruments of conveyance, and will do and perform all other and further acts and things for the better or more fully conveying or assuring to and vesting in the said parties of the second part or their assigns, of all and singular the assets, chattels and property of said Hall's Safe and Lock Com-

pany, as said parties of the second part, their executors, administrators or assigns from time to time or at any time hereafter may reasonably request or require.

And in consideration as aforesaid said Hall's Safe and Lock Company does hereby covenant, promise and agree to and with the parties hereto of the second part, their executors, administrators and assigns, that it, said Hall's Safe and Lock Company will not hereafter engage in or carry on any business whatsoever, and that it will, as soon as practicable, pay and discharge all its debts and liabilities, and that it will thereupon go into liquidation and procure itself to be wound up and dissolved in accordance with the laws of the state of Ohio.

In Witness Whereof, said Hall's Safe and Lock Company has caused these presents to be subscribed in its corporate name by its proper officer, thereunto duly authorized, and its corporate seal attested by its Secretary to be hereunto affixed this twelfth day of May, in the year eighteen hundred and ninety-one.

HALL'S SAFE AND LOCK COMPANY.
(Signed) W. L. HALL, *Prest.*
[SEAL.] W. C. COCHRAN, *Sect.*

Sealed and delivered in the presence of
(Signed) LOUIS OVANSDORH.
F. H. PATTERSON.

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"A"
Statement of Certain Assets
of
Hall's Safe and Lock Company

And Their Values, as the Same Appeared on the Books of Said Company on the 30th Day of June, 1891.

Machinery, plant, tools and patterns	157,527.93
Buildings and leasehold interests	57,643.69
Stock of finished safes	243,116.40
Stock of material raw and in process of manufacture	137,185.47
Bills receivable and book accounts	216,506.84
Cartage, plant, horses, &c	10,000.00
Total of the above mentioned assets	$821,971.33

The above mentioned machinery, plant, tools patterns, buildings and leasehold interests have been appraised at values exceeding by $193,190.40 the sums above mentioned.

(Signed) HALL'S SAFE & LOCK CO.
W. H. HALL, *Pres't.*

STATE OF NEW YORK, *City and County of New York, ss:*

Be It Remembered that on this thirteenth day of May in the year eighteen hundred and ninety-two, before the undersigned, a Notary Public in and for said county personally came Hall's Safe and Lock Company by William H. Hall its president and W. C. Cochran its Secretary the grantor of the within deed and acknowledged the signing thereof to be its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above mentioned.

(Signed) JAMES H. ROBERTSON,
[SEAL.] *Notary Public, New York County.*

Q. I hand you a conveyance by Jennings S. Cox and Anson G. P. Segur to the Herring-Hall-Marvin Company, being a bill of sale dated May 12, 1892, and ask you if you know of the execution and delivery of that paper? (Handing said document to the witness.)

220 A. There was such a conveyance and I recognize this as the form of one of them that was turned over to the Hall Safe & Lock Company.

Mr. MERRICK: Did you have anything to do with it at the time?

The WITNESS: I helped to negotiate that through Mr. E. C. Hall, yes, sir. Mr. Hall was in New York. He kept in touch with the conditions, though.

(Said bill of sale was thereupon introduced in evidence by counsel for cross-complainant, was marked Cross-Complainant's Exhibit 2, G. W. B., and is in words and figures following:)

CROSS-COMPLAINANT'S EXHIBIT 2—BILL OF SALE OF MAY 12, 1892.

CROSS-COMPLAINANT'S EX. 2. G. W. B.

Know all Men by these Presents, That we, Jennings S. Cox, of the City, County and State of New York, and Anson G. P. Segur, of the City of Brooklyn, County of Kings and State of New York, for and in Consideration of the sum of One Dollar and for other valuable considerations, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey unto Herring-Hall-Marvin Company, a corporation organized under the laws of the state of New Jersey, and unto its successors and assigns forever, all and singular the manufacturing plant, machinery, tools, patterns, buildings, fixtures, leasehold interests, stocks of safes and other merchandise, material, manufactured, unmanufactured and in process of manufacture, horses, wagons, vehicles, cartage plant and rigging, bills receivable, book accounts, moneys, debts, dues, books of account and other books, papers, office furniture, trade marks, patent rights, trade rights, good will and all the property and assets of every name and nature,

wheresoever situated, of or belonging to Hall's Safe and Lock Company, a corporation organized under the laws of the State of Ohio, as the same and all and every thereof were sold and conveyed by said Hall's Safe and Lock Company to us, the said Jennings S. Cox and Anson G. P. Segur, by an instrument in writing and under seal, bearing even date herewith, and which instrument is herewith delivered; Together with all our right, title and interest of every name and nature in and to the said property hereby conveyed, and every part and parcel thereof, and all our rights of every description
221 now existing or hereafter to arise as against the Hall's Safe and Lock Company under or by virtue of the said instrument of conveyance of the covenants, terms or conditions thereof.

To Have and To Hold, All and Singular, the above mentioned property and rights and every part and parcel thereof unto the said Herring-Hall-Marvin Company and to its successors and assigns forever.

And we, the said Jennings S. Cox and Anson G. P. Segur, for ourselves, our heirs, executors and administrators, do hereby jointly and severally covenant, promise and agree to and with the said Herring-Hall-Marvin Company and its successors, that we have not done, committed or suffered any act or thing whereby the said property or rights or any of the same now are or at any time hereafter shall or may be impeached, charged or encumbered in any manner or way whatsoever, and that, we and our heirs, executors and administrators will make, execute and deliver to the said Herring-Hall-Marvin Company, its successors or assigns, all other and further instrument or instruments of conveyance, and will do and perform all other and further acts and things for the better or more fully conveying or assuring to and vesting in the said Herring-Hall-Marvin Company or its successors of all and singular our right, title and interest of every name and nature in, about or concerning the property and rights aforesaid, as said Herring-Hall-Marvin Company or its successors from time to time or at any time hereafter may reasonably request or require.

In Witness Whereof we have hereunto set our hands and seals this twelfth day of May in the year one thousand eight hundred and ninety-two.

JENNINGS S. COX. [SEAL.]
ANSON G. P. SEGUR. [SEAL.]

Sealed and delivered in the presence of
L. C. WHARTON.

STATE OF NEW YORK, *City and County of New York, ss:*

On this 13th day of May, 1892, before me personally came Jennings S. Cox and Anson G. P. Segur, known to me to be the individuals described in and who executed the foregoing instrument and severally acknowledged to me that they executed the same.

LOUIS O. VAN DOREN,
Notary Public, N. Y. County.

222 Mr. ALDRICH: I next offer in evidence certified copy of the deed of George R. Gray and Wright D. Pownall, receivers, to the Herring-Hall-Marvin Safe Company, dated the 20th of December, 1900.

(Said certified copy of deed was thereupon marked Cross-Complainant's Exhibit 3, G. W. B., and is in words and figures following:)

CROSS-COMPLAINANT'S EXHIBIT 3—DEED OF DEC. 20, 1900.

CROSS-COMPLAINANT'S EX. 3. G. W. B.

Indenture made the Twentieth day of December 1900, by and between George R. Gray, of the city of Newark and State of New Jersey, and Wright D. Pownall, of the City, County and State of New York, as Receivers of the property of the Herring-Hall-Marvin Company, a corporation organized under the laws of the State of New Jersey, parties of the first part, and Herring-Hall-Marvin Safe Company, a corporation organized under the laws of the State of New Jersey.

Whereas by an order duly made in any by the Circuit Court of the United States for the Third Circuit and District of New Jersey, on or about the 23rd day of December, 1897, in a cause then pending in said court between Stephen A. Jenks, complainant and the above named Herring-Mall-Marvin Company, defendant, the above named George R. Gray and Wright D. Pownall were duly appointed Receivers for the Creditors and Stockholders of said Corporation, with full power to take into their possession all the property and assets thereof, and to perform all the duties upon them and required by law, and with power to continue and carry on the ordinary business of said corporation; and

Whereas by orders thereafter made in and by the Supreme Court of the State of New York for the City and County of New York and likewise by the Circuit Court of the United States for the Sixth Circuit and Southern District of Ohio, Western Division, said George R. Gray and Wright D. Pownall were likewise appointed as such receivers in said jurisdiction; and—

Whereas said George R. Gray and Wright W. Pownall duly qualified as such receivers, and they entered into possession of the property and assets of said Herring-Hall-Marvin Company, and they have ever since continued in the possession thereof, and they have continued to carry on the ordinary business of said corporation as lawfully empowered so to do; and—

223 Whereas an order or decree of the Circuit Court of the United States for the Third Circuit and District of New Jersey duly made and entered in the above named cause bearing date the 9th day of December, 1899, said Receivers were duly ordered and directed to sell at public auction on the premises of the Herring-Hall-Marvin Company, in the City of Hamilton, Butler County and State of Ohio, upon the conditions in said order set forth, and subject to

confirmation by said Court, all the real estate of said Company, and all the personal property, assets, franchises, and good will of said Company in the hands of said Receivers, or to which they should in any wise be entitled, wheresoever situated subject to the payment by the purchaser of all liens upon said property or any part thereof, and subject to the payment by said purchaser of all the expenses and liabilities of the receivership, and subject also to the assumption and performance by the purchaser of the outstanding contracts of the Receivers; all which, and all the terms and conditions of said sale will by reference to said last mentioned order or decree dated December 9, 1899, on file in the office of the Clerk of the Circuit Court of the United States for the District of New Jersey in the Third Circuit, more fully appear: and—

Whereas, like orders for the sale of said property were duly made and entered in and by the Supreme Court of the State of New York for the City and County of New York, on the 12th day of April 1900, and by the Circuit Court of the United States for the Sixth Circuit and Southern District of Ohio, Western Division, on the 14th day of March, 1900; and—

Whereas, under and pursuant to said orders of said several courts the said George R. Gray and Wright D. Pownall as receivers as aforesaid, did on the 31st day of May 1900, sell the property aforesaid at public auction, at the place and in the manner required by said orders, and at said sale the said property was bid in and sold to one Walter Eugene Drumond of the City, County and State of New York for the sum of One Hundred Thousand Dollars, and the said Drumond then and there paid to said Receivers the sum of Fifty Thousand dollars on account of said purchase money, and executed an acknowledgment in writing of his purchase, and an agreement to comply with the conditions of sale prescribed by the orders or decrees for the making of the same; and—

224 Whereas, thereafter upon application of said Receivers an order or decree was duly made and entered in the Circuit Court of the United States for the Third Circuit and District of New Jersey in said cause, between Stephen A. Jenks, complainant and Herring-Hall-Marvin Company, defendant, bearing date the 20th day of June, 1900, by the terms of which last mentioned order or decree the said sale, and the said Receivers' report thereof, were ratified and confirmed, and the Receivers were ordered and directed to make, execute and deliver to the said Walter Eugene Drumond, or his assigns, a good and sufficient conveyance, in the law for the said property real and personal purchased by him as aforesaid upon his or their complying with the conditions of said sale as prescribed by the above mentioned decree for said sale, and also by said decree made the 20th day of June, 1900, and with the reservations in said last mentioned decree provided for; and—

Whereas, thereafter on or about the 2nd day of July, 1900, an order was duly made and entered in and by the Supreme Court of the state of New York for the City and County of New York, confirming said sale and directing said Receivers to carry out and perform the same upon the terms and conditions prescribed in and by

said decree of the Circuit Court of the United States for the Third Circuit and District of New Jersey, dated June 20, 1900, and a like order was duly made and entered by the Circuit Court of the United States for the Sixth Circuit and Southern District of Ohio, Western Division on the 25th day of July, 1900; and—

Whereas, thereafter and before the execution of this indenture said Walter Eugene Drumond duly assigned and transferred his said purchase and all rights thereunder to the Herring-Hall-Marvin Safe Company, the party hereto of the second part, and gave notice in writing to the parties of the first part, and directed them to execute and deliver this indenture to the said last named Company upon due compliance by it with the terms and conditions of said purchase.—

Now this Indenture Witnesseth that in consideration of the premises, and of the sum of One Hundred Thousand Dollars, lawful money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, and of the due performance by the party of the second part of all the matters and things required by the terms of the said decree or either of them to be performed by the purchaser at the above mentioned sale, and of the covenants and conditions hereinafter contained, said parties of the first part have sold
225 and do hereby grant, bargain, sell and convey to the said party of the second part and its successors and assigns forever—All that tract of land and premises situate in the City of Hamilton, in the County of Butler and State of Ohio, described as follows:

Lot number Fifteen hundred and eight (1508) as known and designated upon the recorded plat of the Hamilton Improvement Syndicates second addition to East Hamilton, commencing on the North line of Grand Boulevard, where the same would be intersected by the West line of Mosler Avenue if continued North across Grand Boulevard, where the same would be intersected by the West line of Mosler Avenue if continued North across Grand Boulevard as shown in the Hamilton Improvement Syndicate's subdivisions of East Hamilton Plat Book No. 1, pages 110 and 112, plat records of Butler County, Ohio, and as shown on the Hamilton Improvement Syndicate's second addition to East Hamilton; thence North 87 West along the North line of Grand Boulevard 646.95 feet; thence North 4 30′ East 437.14 feet thence South 89 East 565.51 feet to a point 80 feet distant at right angles from the center line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad's main track, running thence South 6 6′ East parallel with said center line, 442.56 feet to the place of beginning, containing 6.08 acres of land as the same is known and designated on the recorded plat of the Hamilton Improvement Syndicate's second addition to East Hamilton, together with the buildings thereon and the appurtenances thereto.—Being the same premises conveyed to the Herring-Hall-Marvin Company by Lazard Kahn, Oakly W. Parrish, and Moses Mosler, as trustees of the Hamilton Improvement Syndicate, by deed dated October 12, 1897.—Together with the appurtenances, and also all the leasehold interests, manufacturing plant, tools, machinery, merchandise, material and all assets, franchises, property and good will whatsoever, of or belonging to the said Herring-Hall-Marvin Company, to which the parties of the first

part as Receivers are entitled, real, personal or mixed wheresoever situated.—To have and to hold, all and singular, the real estate, lease hold interests, property, franchises and good will hereby conveyed unto the said party of the second part, its successors and assigns, to its and their use and benefit forever, subject however to the payment by said party of the second part of all liens upon said real estate or other property; and said party of the second part does hereby
226 covenant, promise and agree to pay and discharge all such liens.—

Also subject to the payment by said party of the second part of all the lawful expenses and liabilities of said receivership, as specified in said decrees and the party of the second part does hereby covenant, promise and agree to pay and discharge the same, including the amount of certain certificates of indebtedness of said Receivers of even date herewith, the same amounting to One Hundred Thousand Dollars, and the interest thereupon, and which certificates of indebtedness have been issued pursuant to an order or decree of the Circuit Court of the United States for the Third Circuit and District of New Jersey, bearing date the first day of December 1900; subject also to the assumption and performance by said party of the second part, and its successors of all the outstanding contracts of the parties hereto of the first part as such Receivers, and the party of the second part does hereby assume and agree to carry out and perform all such contracts. And subject also to all the terms, conditions, provisions and reservations of whatsoever name or nature contained in said orders or decrees, relating to the sale of said property, which are herein before referred to or of any or either thereof.—

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year aforesaid.—

GEO. R. GRAY. [SEAL.]
WRIGHT D. POWNALL. [SEAL.]

Signed, sealed and delivered in presence of
JAMES E. HOWELL.
CHARLES EDGAR MILLS.

STATE OF NEW YORK, *County of New York, ss:*

Be it Remembered, that on this 28th day of December 1900, before me, Charles Edgar Mills, a Commissioner of the State of Ohio, resident in said state and County of New York, personally appeared the foregoing named George R. Gray and Wright D. Pownall, who executed the foregoing deed or instrument, and severally duly acknowledged that they executed the same as their free and voluntary act and deed for the uses and purposes therein described and mentioned, individually and as Receivers within described.—

227 In Witness whereof, I have hereunto set my hand and official seal, on the day and year last above written.

CHARLES EDGAR MILLS,
[SEAL.] *Commissioner of Deeds for the State of Ohio, in New York, No. 115 Broadsay, N. Y. City.*

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered, that on the 28th day of December, in the year of our Lord, 1900, before me, the subscriber a Notary Public, in and for said County, personally came George R. Gray and Wright D. Pownall, Receivers of the Herring-Hall-Marvin Company, to me personally known and known to be the persons executing the foregoing deed or instrument, and severally duly acknowledged the execution thereof to be their voluntary act, for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.—

CHARLES EDGAR MILLS,

[SEAL.] *Notary Public for New York County in New York.*

I, hereby Certify that there was $100.00 in U. S. Revenue Stamps attached to the foregoing deed, duly cancelled.

WM. J. BECKER, *Recorder,*
Per A. GETZ, *Deputy.*

I, Wm. J. Becker, Recorder of Butler County, Ohio, do hereby certify that the within and foregoing instrument is a true and correct copy of Deed, from G. R. Gray and W. D. Pownall, Receivers to Herring-Hall-Marvin Safe Co. recorded in Vol. 134 page 119 &c. Butler Co. Ohio, deed records.

Witness my hand and official seal this 18th day of M'ch 1901.

(Signed) WM. J. BECKER,
[SEAL.] *Recorder, Butler County, Ohio.*

228 Q. Who were parties to the organization of the Herring-Hall-Marvin Safe Company?

A. Who were parties?

Q. Yes.

A. Do you mean who were stockholders?

Q. Yes.

A. I couldn't say, sir. There were a large number.

Q. I don't mean to ask you their names, but who they were, whether creditors or stockholders——

A. They consisted of the original stockholders of the Herring-Hall-Marvin Company and creditors, in a large proportion, of the Herring-Hall-Marvin Company.

Q. My question is designed to elicit whether or not it was in effect a reorganization of the former company.

MR. MERRICK: I object to the question as leading and calling for a conclusion of the witness. Let him state what he knows, if anything, about it.

A. I have answered that question.

Q. That it was?

A. That it was, yes, sir.

Q. Had the business been continued as a going business during the time that the property was in the hands of the receivers?

A. Without a single day, without the exception of a single day absolutely, yes.

Q. You may state whether or not it was taken over by this new corporation, the Herring-Hall-Marvin Company as a going business?

A. Yes, sir.

Q. You may state generally Mr. Pullen, how the Herring-Hall-Marvin Company was organized and by whose direction and for what purpose?

Mr. MERRICK: I object to it as improper for this witness to state, unless he knows of his own knowledge concerning it.

Mr. ALDRICH: He does know.

Mr. MERRICK: He hasn't shown any knowledge thus far except common rumor and report. (To the witness): Did you have anything to do, with it personally?

The WITNESS: Yes, sir, I was one of the stockholders and I became a director in the company upon its organization.

Q. In what company?

A. The Herring-Hall-Marvin Safe Company.

Q. You may answer my question.

A. I became a director in the Herring-Hall-Marvin Safe Company from the day of its beginning. I am a stockholder, and I was one of the executive committee from the day of its beginning.

229 Q. I understand, Mr. Pullen, that a committee was appointed representing the stockholders and creditors of the insolvent company to reorganize this company?

A. Yes, sir.

Q. I want you to state the facts and give the full details of such reorganization?

A. There was a reorganization committee appointed by the creditors and stockholders of the Herring-Hall-Marvin Company. Mr. Otto T. Brainard, president of the New York Security & Trust Company, was chairman of that committee. Mr. Tenney, the present president of the Herring-Hall-Marvin Safe Company, was one of the committee, and there were others—I don't call them to mind—representing the creditors and the stockholders, who took an active part and brought about the resultant quantity.

Q. Well, go on and state about the exchange of shares, the assessment and so on.

A. There was an assessment of $12.00 a share on the preferred stock——

Q. Of what company?

A. Of the Herring-Hall-Marvin Safe Company; $6.00 a share assessment on the common stock of the Herring-Hall-Marvin Safe Company. Some of the creditors accepted a certain cash payment and the balance in stock of both denominations. All of these assessments and these funds went into the hands of the reorganization committee. The business was bought at the public sale of the receivers by a representative of the reorganization committee, a Mr. Drummond, and the transfer was made from Mr. Drummond to

the Herring-Hall-Marvin Safe Company. That is the sum and substance of it.

Q. How was the stock exchanged?

A. In what proportion?

Q. Yes.

A. That I don't know, sir. The records of the reorganization committee should show that.

Q. Do you know whether or not the stockholders of the Herring-Hall-Marvin Company received stock in the reorganized company, the Herring-Hall-Marvin Safe Company?

A. The majority of them, yes. Some of them didn't go into it.

Q. That is failed to pay their assessments?

A. Yes, sir.

Q. What signs were maintained on the factory in Cincinnati showing the name of the company?

Mr. MERRICK: I object to the question as improper, incompetent and leading.

230 Q. In the first instance, during the ownership of the Hall Safe & Lock Company?

A. Hall's Safe & Lock Company were the signs which governed during their term of business.

Q. And when that company was sold what signs were maintained on the factory?

A. Herring-Hall-Marvin Company was put up in many placed.

Q. How about the old signs, what was done with them?

A. They were painted over and new signs painted right on, mostly on the brick and on the lintels over the doors of the office building and places like that.

Q. Do you mean that the signs of the Hall Safe & Lock Company were obliterated?

A. Yes, sir.

Q. We have had photographs of the works, Mr. Pullen, in which we find signs of the Hall Safe & Lock Company also upon the manufactury.

Mr. MERRICK: I object to the question as leading and cross-examination of his own witness, and otherwise improper.

Mr. ALDRICH: Let me finish it and then make your objection.

Q. (continuing): Do you mean that in all cases the signs were obliterated or did the name Hall's Safe & Lock Company also remain on the works?

Mr. MERRICK: The same objection is renewed for the same reasons.

A. By "photographs" I presume you refer to letter heads, printed letter heads?

Q. Yes.

A. Which were made from electro cuts. These electro cuts were used during the term of the Hall Safe & Lock Company and the

letter heads with this on was continued by the Herring-Hall-Marvin Company. (Indicating upon letter head or cut.)

Q. But my question is designed to elicit whether or not there were any signs containing the name Hall's Safe & Lock Company left upon the factory.

Mr. MERRICK: Objected to for the same reasons as before.

A. My recollection is a few of those signs were left. They were not all obliterated.

Q. Were those electro cuts you have spoken of an actual representation of the factory conditions or otherwise?

A. An electro cut, a cut of a factory, is always exaggerated to show the magnitude of the thing, and the electro cuts would
231 impress the public with the fact that the works were really larger than they were. If it was a fac simile picture it would be a little different.

Q. Did you have put upon the cuts pictures of signs that did not in fact exist?

Mr. MERRICK: I object to that for the same reason as before?

A. Why, Mr. Aldrich, we were in the habit of putting signs pretty much wherever they would show. I wouldn't want to say every identical sign on the building appeared on these cuts, but my impression is every sign that appeared on the cuts was on the buildings.

Q. I will show you the cut having the signs of the Hall Safe & Lock Company on the factory?

A. Yes, sir.

Q. I wish you to state whether or not there were such signs upon the factory during the ownership of the successor companies?

Mr. MERRICK: Let it be noted that the witness is examining a certain paper, being a paper marked "Hall's Safe & Lock Works," at the top, a letter head or cut.

The WITNESS: Now, you are speaking about the Hall Safe & Lock Company and this is Hall Safe & Lock Works.

Q. No, sir, you don't understand me, Mr. Pullen. Don't be misled by the counsel's statement. You will see on the picture of the buildings themselves the sign "Hall's Safe & Lock Company?"

A. No, sir, Hall's Safe & Lock Works.

Q. I wish you would look carefully before you answer the questions, Mr. Pullen. There are three of those signs on the buildings.

A. I only see one sign there, Hall's Safe & Lock Company. That is on the side of what used to be the warehouse.

(Said letter head or cut last shown witness by counsel for cross-complainant was thereupon offered in evidence by counsel for cross-complainant and the same was thereupon marked Cross-Complainant's Exhibit 4. Said cut or letter head is as follows:)

Here follows Cross-compl't's Ex. 4 withdrawn by leave of Court June 12, 1905, and not reproduced here.

Q. What do you say now as to what signs were maintained on the warehouse?

Mr. MERRICK: I object to it as having been already answered fully and explicitly and that it is cross-examination of his own witness.

A. Why, Mr. Aldrich, judging from that cut I would in-
232 fer that in the changing of that cut and printing the words "Hall's Safe & Lock Works," that an omission had been made in not changing the name "Hall's Safe & Lock Company" on that particular building. My memory doesn't go back to why or how it was done.

Q. Did you maintain a salesroom in Cincinnati?

A. Yes, sir.

Q. What sign was used in connection with that business?

A. The salesroom on Third Street had the name Herring-Hall-Marvin Company over it and the warehouse which was used as a sales room, on Pearl Street, had the name later on, Hall's Safe & Lock Works put over the lintel and up over the front of the building.

Q. And in your salesrooms generally throughout the country what did you continue to do with reference to the use of the word Hall?

A. Why, all the signs were understood to be maintained with an addition, the name Herring-Hall-Marvin Company, to appear in order to identify the establishment as the Herring-Hall-Marvin Company's property without obliterating the effect of the predecessor, the Hall Safe & Lock Company.

Q. I believe there was no corporation known as the Hall Safe & Lock Works, was there?

A. No, sir.

Q. That was a mere arbitrary designation, was it?

A. To designate one of the branches or plants of the company.

Q. And with what design?

A. Keeping the name of the Hall product before the public.

Q. Did you continue to do so likewise in your advertisements and catalogs?

Mr. MERRICK: I object to that as a conclusion. Let him state what the facts were.

Mr. ALDRICH: Go ahead, answer the question.

A. There was no issue of a catalog gotten out by the Herring-Hall-Marvin Company until the year 1897. Then the name of——

Q. What catalog did you use?

A. The catalogs which were gotten up by the Hall Safe & Lock Company, in large numbers, and turned over to the Herring-Hall-Marvin Company.

Q. In other words you continued to use the catalog of the Hall Safe & Lock Company?

A. Yes, sir.

Q. Have you one of those catalogs here?

A. Right there is one, yes, sir. I have one of the issues of the catalog of the Hall Safe & Lock Company.

233 Mr. ALDRICH: Let the catalog be identified as Cross-Complainant's Exhibit 5, and I offer the catalog in evidence.

(Said catalog was thereupon marked Cross-Complainant's Exhibit 5, G. W. B., and the same is hereto annexed:)

Q. As I understand, you continued to use the same catalog from the time of the sale by the Hall Safe & Lock Company, in May, 1892, of the Herring-Hall-Marvin Company, during the period of the receivership and during the ownership of the Herring-Hall-Marvin Safe Company up to 1897; is that correct?

Mr. MERRICK: I object to the question as leading, incompetent and immaterial and as stating a fact not yet of record in this case anywhere.

A. The catalog of the Hall Safe & Lock Company was used by the Herring-Hall-Marvin Company up to 1897, when they got out a paper-backed catalog under the name of the Herring-Hall-Marvin Company.

Q. The catalog was such as we have introduced and have marked in evidence?

A. Up to 1897, yes, sir.

Q. I hand you one of the small catalogs and ask you to state whether or not you used that during this same period?

A. This is the price list, Mr. Aldrich, issued by the Hall Safe & Lock Company, which was in use at its factory and its branch houses.

Q. And how long was that used after the Hall Safe & Lock Company was sold to Cox & Segur?

A. That I could not say. It would depend upon the quantity on hand. It was used for some time, however. The period I couldn't designate, Mr. Aldrich.

(Counsel for cross-complainant thereupon offered said last mentioned catalog in evidence, which was thereupon marked Cross-Complainant's Ex. 6, G. W. B., and is hereto attached.)

(Here follows Cross-compl't's Ex. 6. Withdrawn by leave of Court June 12, 1905, and not reproduced here.)

Q. I notice that the price list has a stamp upon it; you may state who put that stamp there and what it signifies?

A. I couldn't say who put that there. It was a stamp that was prepared, a rubber stamp with the name "Herring-Hall-Marvin Company, successors to," but who put it on the various articles I don't know; some clerk I presume.

Q. I don't mean what particular clerk, but I want to know
234 who gave such instructions?

A. Well, under my instructions; I would say that.

Q. That is what I designed to elicit.

A. Or the instructions of one of the officers of the company.

Q. Are you able to state approximately how long that was so done?

A. No, I could not say, Mr. Aldrich.

Q. When, if at all, was the factory in Cincinnati repainted?
A. Along in the early spring of 1894.
Q. And you may state, if you know, what signs were painted on the works at that time?
A. Hall Safe & Lock Works.
Q. In how many places?
A. That I couldn't say; they slathered it all over everything, on every street, every front and tops of buildings, wherever it would catch the eye.
Q. I hand you a circular, which I understand was gotten out about that time. I will ask you to state when it was gotten out and by who, and what it is designed to represent?
A. Mr. Aldrich, I wouldn't say that this circular was gotten out at that time. It was a circular that was issued for the description of individual inquiries for safes.
Q. By whom was it issued?
A. It was evidently issued, governed by the lettering and the effect at that time, but whether it was issued in 1894 or 1896 I wouldn't say. It was a circular that was used in the conduct of the business.
Q. And how early was it used?
A. It was begun I should say at or about that period.
Q. What time was that?
A. Spring of 1894.
Q. What does the cut at the head of this circular represent?
A. It is supposed to be a bird's eye view of the factory of the company located on the squares between Central avenue and Elm and Pearl and Second Streets.

(The circular last above referred to and shown the witness was thereupon offered in evidence by counsel for cross-complainant; was marked Cross-Complainant's Exhibit 7, G. W. B., and is as follows:)
(Here follows Cross-Compl't's Ex. 7 withdrawn by leave of Court by order of June 12, 1905, and not reproduced here.)

Q. Is it in fact a bird's eye view of the factory?
A. Why, with some enlargement, yes, a pretty close representation of it.
Q. I wish you would state whether or not there are signs on that cut that were not in fact upon the factory.
A. Why, Mr. Aldrich, I wouldn't want to say that. I
235 know the factory was covered with signs, all the faces and like that; in the preparation of the cut, I would infer the party who prepared it governed his preparation by the signs that appeared.
Q. That were actually there?
A. I should say so, yes.
Q. Under whose direction was the advertising matter prepared?
A. Well, sir, I couldn't say that. We all took a hand in it, in the preparation of advertising and literature and all such things pertaining to the business. I used to get up a great deal; W. H.

Hall used to get up a good deal, E. C. Hall was in touch with the preparation of the general matters referred to.

Recess until 2 o'clock P. M.

2 O'CLOCK P. M., *December* 28, 1904.

Parties met after recess.
Present as before.

The direct examination of witness RICHARD T. PULLEN was resumed by Mr. Aldrich, as follows:

Q. You may state what steps were taken, if any, to keep the name of Hall prominently before the public upon the sale of the Hall Safe & Lock Company to the Herring-Hall-Marvin Safe Company?

A. We continued to use all of the catalogs, printed matter, letter heads, pamphlets, circulars; the name upon the factories, as alluded to; the names upon all the branch houses in the West, Louisville, St. Louis, the Chicago house being under the jurisdiction of A. L. Deane & Company, the signs which were originally prepared by the Hall Safe & Lock Company were continued; Kansas City, San Francisco; the purpose being to keep the word "Hall," as pertaining to safe structure, safe product, prominently and continuously before the public in the strongest sense.

Q. What was the capitalization of the Hall Safe & Lock Company of Ohio?

A. $375,000.00.

Q. And when did Joseph L. Hall die?

A. March 10, 1889, I think was the day.

Q. Who were the trustees or executors of his estate?

A. His widow, Mrs. Sarah J. Hall, his son, Edward C. Hall and myself.

Q. What proportion of this total capital stock of the Hall Safe & Lock Company was held by the estate?

A. I couldn't state the exact amount; I should say in the neighborhood of $320, odd thousand dollars.

236 Q. Was this so held at the time of the sale? resulting in the reorganization of the Herring-Hall-Marvin Company?

A. Yes, sir, held by the trustees, yes, sir.

Q. What companies were combined or brought under one ownership at the time of the organization of the Herring-Hall-Marvin Company?

A. The Hall Safe & Lock Company, Herring & Company, Marvin Safe Company, Farrell & Company and Meyers & Smith. As I understood Herring & Company, Farrell & Company and Meyers & Smith were not organizations; they were firm affairs.

Mr. MERRICK: They were not corporations?

The WITNESS: Not corporations. I said organizations—not corporations; they were not corporations.

Q. What was the total capitalization of the Herring-Hall-Marvin Company?

A. $3,300,000.00.

Q. And what proportion of this total capitalization was given to the Hall Safe & Lock Company properties?

A. $700,000.00 of the common stock.

Q. And anything else?

A. $600,000.00 in cash.

Q. What proportion did this bear to the total cash that was paid for these several properties?

A. I don't know. I don't know what cash the promoters paid for the company's interests.

Q. What was the stock if you know given to the other companies?

A. I don't know, sir. That was between the promotors and the individual representatives and themselves.

Q. In the first directorate and so forth, the governing body of the Herring-Hall-Marvin Safe Company, who held the control of the combined company?

A. Why, the representatives of the Hall Safe & Lock Company.

Q. Had control of the entire organization?

A. Yes, sir, by allotment of directors and officers.

Q. What was done with the stock and the cash received by the Hall Safe & Lock Company and the trustees of Joseph L. Hall's estate upon the organization of the Herring-Hall-Marvin Safe Company?

A. The cash was turned over to the Hall Safe & Lock Company, the stock, with the exception of a few shares distributed to the heirs of Joseph L. Hall by instructions of the trustees, the purpose being to keep the stock out of the names of the trustees for certain reasons.

Q. Who were the heirs to whom the trustees assigned this
237 stock, designing by this question particularly to elicit from you the information as to the Hall boys, as they are called?

A. There were eleven living children altogether, five boys and six girls.

Q. And this $700,000.00 of stock, as I have understood, was distributed among these heirs?

A. With the exception of a few shares which passed to the trustees, a limited number of shares.

Q. Who were the officers of the Herring-Hall-Marvin Company?

Mr. MERRICK: When?

Mr. ALDRICH: At the time of its organization and the taking over of the business of the Hall Safe & Lock Company.

The WITNESS: The officers, or the directors do you mean?

Mr. ALDRICH: You may give both.

A. The directors consisted of Mr. John H. Davis and Wright B. Pounall, Willis B. Marvin, Frank O. Herring, John Farrell, William S. Rowe, Richard Diamond, Joseph Rawson, Jr., William H. Hall, Edward C. Hall and Richard T. Pullen.

Q. How many of these were Cincinnati men?

A. The Cincinnati people consisted of William S. Rowe, Richard

Diamond, Joseph Rawson, Jr., William H. Hall, Edward C. Hall and Richard T. Pullen, a majority of the board.

Q. Did the Cincinnati men represent other interests than the Hall interests?

A. They represented their own interests as stockholders.

Q. Acquired through the Hall interests?

A. They were named by the Hall contingent, but they were all stockholders in the concern.

Q. Now, you may give the officers.

A. Edward C. Hall, president; vice presidents, John Farrell, Willis B. Marvin, Wright B. Pounall; treasurer, William H. Hall; assistant treasurer, John H. Davis; secretary, Richard T. Pullen.

Q. Was there any contract of employment of any of these officers of the Herring-Hall-Marvin Safe Company?

A. Yes, sir.

Q. Have you a copy of that contract with you?

A. I have not, no, sir.

Q. Each individual was furnished with a contract and a copy of each kept by the company. The contracts were made through the promoters who bought out the business?

Mr. ALDRICH: Have you a copy of the contract, Mr. Mer-
238 rick, between the Herring-Hall-Marvin Safe Company and Mr. Edward C. Hall?

Mr. MERRICK: No, I don't think I have. If I have I will let you have it.

The WITNESS: I think the original of the several contracts, except my own, is in the executive office in New York.

Q. You may state whether or not the contracts were in the same general form?

A. Why, that was my understanding, except as to the amount of compensation. I know they covered a certain period of time.

Q. I will ask you to produce your contract and file a copy of it with the Examiner.

A. I will do so.

Q. How long did Edward C. Hall continue to be an officer of the Herring-Hall-Marvin Safe Company?

A. Up to his resignation in I think July, July 8, 1895, or 1896. In the minutes of July 8, 1896, on page 161 of the Minute Book of the Herring-Hall-Marvin Safe Company I find that there was a resolution passed that the resignation of Mr. Edward C. Hall as an officer and employé of the company had been accepted, to take effect as of date the first day of August, 1896—(Reading:) "Hereby accepted to take effect from the first day of August, 1896."

Q. I notice that in a blank contract of employment which has been handed me by Mr. Merrick there is a covenant on the part of the employé "that he will not so long as the Herring-Hall-Marvin Safe Company may desire to retain his services engage either in the State of Ohio or State of New Jersey, or in any of the States east of the Mississippi River in the business of manufacturing, selling, buying or dealing in fire or burglar proof vaults or safes, or in any busi-

ness or occupation such as the said corporation known as the Hall Safe & Lock Company has heretofore been engaged in, or such as the Herring-Hall-Marvin Safe Company is authorized or empowered to engage in, or in any other business which will or may compete or interfere in any way with the business of the said Herring-Hall-Marvin Safe Company." Now, I wish you to state whether or not in addition to accepting the resignation of Mr. Edward C. Hall you gave him any release, and if so, to produce a copy of such release.

A. I gave him?

Q. The company gave him.

Mr. MERRICK: Do you understand the question?

239 The WITNESS: Yes. I don't find anything of record in the minutes of the company, at the time the resignation was accepted. I understood, however, that the executive committee, consisting of the two Mosler- and Mr. Carpenter—whether it was through the secretary of the company or by themselves, had communicated with Mr. Hall accepting his resignation and releasing him from the duties obligated by that contract. Just the wording of that communication I don't know, I haven't got, but it was my understanding that there was a letter sent accepting the resignation and——

Q. What I desired to elicit from you is whether you have a copy of that communication.

Mr. MERRICK: I think the best evidence of that would be the production of that contract and I suggest that this be stricken out.

Mr. ALDRICH: No, let that stand.

(The question was read by the reporter.)

A. I have no copy of it. Whether there is a copy in the executive office or not I don't know.

Mr. ALDRICH: I request upon the record Mr. Merrick to produce the copy with reference to Edward C. Hall and also the other Hall boys. Will you do so?

Mr. MERRICK: Certainly I will do so if I can.

Q. The contracts of January 15, 1886, between Hall's Safe & Lock Company and A. L. Deane & Company, as well as the supplemental contract of June 23, 1890, between the same parties, have already been introduced in evidence. Were you frequently in Chicago at that time?

A. Yes, sir.

Q. Are you able to state anything about the signs that were maintained at the Chicago office?

A. The signs that were in use at that time were absolutely the same signs that had been in use up to the transfer of the business of A. L. Deane from the Hall Safe & Lock Company, the Hall Safe & Lock Company, Hall safes.

Q. And when the business of the Hall Safe & Lock Company was sold to the Herring-Hall-Marvin Safe Company, what arrangements if any, were made with A. L. Deane & Company with reference to the continuance of the business?

A. They were notified by letter, by myself as secretary, of the transfer of the Hall Safe & Lock Company's interest to the Herring-Hall-Marvin Safe Company, and pending the preparation of a further agreement governing the matters between the respective parties, that the contract or contracts between A. L. Deane
240 & Company and the Hall Safe & Lock Company would be recognized. The date of that letter I don't know.

Mr. ALDRICH: I will show you in just a minute.

Q. I will ask you if the letter to which you refer is that dated June 14, 1892, addressed to Messrs. A. L. Deane & Company, Chicago, Illinois, and signed Hall Safe & Lock Company, R. T. Pullen, and Herring-Hall-Marvin Safe Company, R. T. Pullen? (Handing said letter to the witness.)

A. Whether this is a verbatim copy or not I wouldn't say, but I known that a letter purporting to cover the subject matter herein outlined was forwarded by myself as an executive officer and an officer of the two companies.

Q. Have you any reason to doubt that that is an accurate copy of the letter?

A. No, I have not.

Q. I wish you to compare it in some way with the original.

A. I haven't the original here. I have the original in my Hamilton office.

Q. We shall have to have a comparison, because I desire the record to show an exact copy of that letter. You will please compare it before the examination is through. To that communication was any answer received from A. L. Deane & Company?

A. Yes, sir.

Q. I show you a letter dated Chicago, June 15, 1892, addressed to the Hall Safe & Lock Company, Cincinnati, and signed A. L. Deane & Company, and ask you if that is the answer received to the communication of the 14th? (Handing said letter to the witness.)

A. Mr. Aldrich, I have got the original in my Hamilton office. I would say that this is, from my recollection.

Q. Before your testimony is closed I desire comparisons made so that we can be certain upon that point. I call your attention to a letter addressed to Messrs. A. L. Deane & Company, Chicago, Illinois, under date June 16, 1892, and signed Herring-Hall-Marvin Safe Company, Pullen, and ask you if that is a copy of a communication sent at that time in due course? (Handing the said letter to the witness.)

A. I should say it was, Mr. Aldrich.

Q. You may examine the original in that case also, Mr. Pullen, so as to have no uncertainty about it. How long did the firm of A. L. Deane & Company continue to sell the product of the Hall Safe & Lock Company and the successors of that company?

A. The books of the Hall Safe & Lock Company, Herring-
241 Hall-Marvin Company and George R. Gray and Wright B. Pounall would indicate that it went up to January or February, 1898.

Q. Without going into the character of the controversy that then arose, I would ask you whether or not there was a controversy at that time?

A. A serious controversy, yes.

Q. Up to that time you may state whether the firm of A. L. Deane & Company continued to use the same signs of Hall safes the Hall Safe & Lock Company in the conduct of their business?

A. Yes, sir.

Q. At what other places than Chicago did the firm of A. L. Deane & Company maintain offices if you know?

A. They had a local agency at Omaha and a local agency at Denver.

Q. And at these places did they also keep prominently before the public, in accordance with their contract to which your attention has been called, the name of Hall's safes and the Hall Safe & Lock Company?

A. I was never in Denver but once during the A. L. Deane & Company period, but they had the sign "Hall's Safe & Lock Company" on the store. I was in Omaha a number of times. I closed out a concern that represented us there who were unfortunate through the mishap of the cyclone. I got the firm of A. L. Deane & Company to take over that business. That business at the time they took it over was represented by a man named Boyer, who had his name up very prominently, Hall's Safe & Lock Company, and Hall's safes and so forth, and A. L. Deane & Company took that establishment over and continued it. It was through my personal influence with A. L. Deane & Company that I got him out to Omaha and got him to take that interest.

Q. And it was continued?

A. It was continued with the elimination of A. L. Boyer's name—with the elimination of A. L. Deane & Company as dealers.

Q. I have understood you to say in all these agencies the name of Hall's safes as applied to the product was kept prominently before the public, was that true?

Mr. MERRICK: I object to that as leading.

A. Yes, sir.

Q. Was the controversy at Chicago a somewhat bitter one?

A. Well, it entered into unjust personalities, yes, through a man that I had befriended very largely——

Q. We don't want to go into it at all.

A. Yes, I will say yes, through unjust personalities.

Q. And it was after this controversy, as I understand it, that A. L. Deane & Company formed a connection with the present
242 company known as Hall's Safe Company of Cincinnati?

A. I wouldn't state the time. It was the time they organized though. They were handling safes right along.

Q. I believe, if I recollect the facts, that A. L. Deane & Company failed?

A. Yes, sir.

Q. About the time you have mentioned?

A. Yes, sir.

Q. The time of this controversy?

A. Yes, sir, and it was through my personal acts that this enmity or this bitterness began, through my application of a literal condition governing the corporate interests.

Q. And after their failure the record shows that A. L. Deane & Company or Donnell, succeeding Deane after Deane's death, organized the Hall Safe & Lock Company of Illinois?

A. No, I don't know about that. I don't know. Mr. Deane I think died some time after the organization of the Hall Safe & Lock Company was perfected. The dates I wouldn't give.

Q. But it was after the failure?

A. What, his death?

Q. No? The organization of the Illinois corporation.

A. Why, it was along about February I think. The receivership was December 23rd I think.

Q. Of what year?

A. In 1896, and I think the Chicago corporation was along in February some time, if I call to mind, the following year.

Mr. MERRICK: What receivership do you refer to?

Mr. ALDRICH: Of A. L. Deane & Company.

The WITNESS: The receivership of the Herring-Hall-Marvin Company.

Mr. MERRICK: I thought the witness was wrong.

The WITNESS: You spoke of the receivership. I had in mind our receivership.

Mr. ALDRICH: I spoke of the receivership of A. L. Deane & Company.

The WITNESS: I didn't know there was a receivership. I understood there was an assignment or a bill of sale. I didn't know it was designated as receivership.

Q. You knew that they failed?

A. Yes, sir, indeed I did.

Q. With how many representatives of the interests known as Hall's Safe & Lock Company of Ohio were contracts of employment made?

A. With Mr. E. C. Hall, Mr. W. H. Hall and myself.

Q. When did William H. Hall leave the service of the
243 Herring-Hall-Marvin Company?

A. There is nothing to indicate a resignation, but Mr. Hall did resign. I think it was in the spring of 1896, and from the fact that the minute book does not show the presentation nor acceptance of his letter of resignation, I rather infer that it being near the period of the annual meeting, it was simply carried and at that time he was dropped; he discontinued his connection with the company as an officer and director.

Q. At what date?

A. The annual meeting came along in May or June and I rather think it was at that time.

Q. 1896?

A. Yes, sir.

Q. And since that time neither Edward C. Hall nor William H. Hall has been in the service of the Herring-Hall-Marvin Safe Company?

A. Since August 1st with Mr. E. C. Hall and Mr. W. H. — at the annual round-up. That is my inference from the silence in the minutes.

Q. What other Hall boys are there?

A. There is Mr. Charles O. Hall, Mr. A. Acton Hall, Mr. Walker T. Hall.

Q. And what were the names of the daughters?

A. Do you want their married names?

Q. Yes, their married names.

A. There was my wife, Mrs. Pullen, Mrs. Kate [illegible]. Hart, Mrs. Sarah J. Clarke, Mrs. Pearl Hall Junkerman, Mrs. Chloa Kemper and Mrs. Jessie L. Trevor.

Q. In the proceedings leading to the sale of the Hall Safe & Lock Company to Cox & Segur and the conveyance by Cox & Segur to the Herring-Hall-Marvin Safe Company were all of these parties represented, either in person or by proxy or by the trustees?

A. They were not represented except through Mr. E. C. Hall and mys-lf as directors, and officers in the company, who had conducted the negotiations, Mr. Hall taking the very active part, the leading part in New York City most of the time. They, as stockholders of course authorized us to represent them.

Q. Have you a copy of the proceedings taken by the stockholders of the Hall Safe & Lock Company?

A. I have not.

Q. Authorizing this sale?

A. I have not. I haven't got the minutes. The minutes were kept, however, of the occasion.

Q. Who has them?

A. Why, they were turned over to Mr. E. C. Hall as receiver of the Hall Safe & Lock Company.

Q. Receiver? What do you mean by that?

244 A. Mr. E. C. Hall was named as receiver by the Hall Safe & Lock Company to see that all of its debts were paid, and its charter cancelled and statutory proceedings pertaining to the liability of a stockholder——

Mr. MAXWELL: The same as a dissolution of the Hall Safe & Lock Company?

The WITNESS: The same as a dissolution of the Hall Safe & Lock Company, as governed by the articles of agreement under which the sale was made.

Q. You may state whether or not there was any dissent on the part of any person in interest in the Hall Safe & Lock Company, with reference to the sale of Cox & Segur on May 12, 1892?

A. Not to my knowledge.

Q. And I have understood you to testify already that all of the Hall heirs participated in the benefit of this sale?

A. Yes, sir.

Q. What action, if any, was taken by the directors with reference to the bill of sale that was made by the Hall Safe & Lock Company?

A. Why, they ratified the same.

Mr. MERRICK: I object to that, the record is the best evidence of it.

Mr. ALDRICH: I will ask you to produce the record then upon that subject.

Mr. MERRICK: I haven't got the record.

Q. Who has the custody of the records of the Hall Safe & Lock Company?

A. Why, Mr. Aldrich, I couldn't say. Years ago, as secretary of the company, I turned them over to Mr. E. C. Hall, who was appointed a receiver of that company to wind up its affairs.

Q. Who were the directors of the company at the time this sale was made?

A. My recollection is that it was Edward C. Hall, W. H. Hall, Charles O. Hall, John B. Marvin and myself.

Q. Were you present at the directors' meetings leading to the sale?

A. Yes, sir.

Q. You have, as I understand, not the custody of these records?

A. I have not at present.

Q. You may state whether or not there was any dissent as to this sale on the part of any of the Halls?

A. No, sir.

Q. Upon the organization of the Hall Safe & Lock Company of Illinois, or soon thereafter, you may state whether or not you met Donnell or Deane, or either of them?

245 A. Yes, I was in Chicago off and on and I saw both of the gentlemen.

Q. What, if anything, did you ever say to them in reference to the use of the word "Hall" in their corporation that they had organized, and to whom did you say it?

A. My recollection is that I wrote to Mr. Deane personally—I kept no copy of my letter—advising him that I had been informed that they had done so and so, and in my opinion it was going to lead to a conflict of interests that would be disagreeable and result in very unpleasant personal conditions. After that, when I used to go to Chicago, my talk mostly was with Mr. Deane. There seemed to be a sort of condition between Donnell and myself that we couldn't get as close together as I did with Deane. I used to go up to his house and spend evenings and stay there at night time, and I protested through these means that I thought the step was the wrong one.

Mr. MERRICK: Don't characterize what you did. What did you say to Deane.

The WITNESS: I characterized it as an improper step on their part.

Mr. MERRICK: Don't characterize it. What did you say.

The WITNESS: I said I thought it was the wrong step for them to pursue. I wouldn't quote my exact words, but that was the purport of it.

Mr. MERRICK: I ask to have stricken out of the record that he protested.

Q. During the period from the cessation of your relations with A. L. Deane & Company, up to the time that you opened a place of business in Chicago during the present year, who handled your safes in Chicago?

A. No one particularly. We endeavored to make sales by letter and by personal visits of myself; I made a volume of sales there myself. When there was anything important in the shape of contracting for work, I went up and I usually got it.

Q. State whether or not Mr. Trumbull at any time represented you?

A. No, sir. I have sold Mr. Trumbull second hand safes. He is a dealer on his own account.

Q. Was their product actively in the Chicago market and in that vicinity?

A. Covering what period?

Q. During the period I have stated?

A. After the receivership?

Q. No. After your relations with A. L. Deane & Com-
246 pany had ceased, up to the time you opened the store, were you doing what you could to engage in the trade in the Chicago market?

A. Yes. One order I call to mind was when I closed a deal with the Merchants' Loan & Trust Company for 4,000 boxes, amounting to $4,000.00. I took that personally.

Q. That is the only order you had within those years in Chicago, is it?

A. No. I call that to mind as a leading order.

Q. What are you able to say, Mr. Pullen with reference to the knowledge on the part of the general public, regarding Hall's safes and the general reputation that the safes had come to enjoy through this long course of business, from the forties down to the present time?

Mr. MERRICK: I object to the question as asking for opinion evidence and a conclusion.

Mr. ALDRICH: I shall follow it up by something very specific. I want him to state generally.

A. Beginning with my introduction into the safe business, I recognized the fact that the Hall Safe & Lock Company and its products stood preeminent. From that time down, in fact to the present period, I don't know of a product that enjoys a wider reputation than the Hall product. It was such that when we came in competition, if there were ten competitors, nine of them tried to knock the Hall Safe & Lock Company's product by doing and saying and resorting to anything and everything. I never knew of an article that stood as preeminent as the product of Joseph L. Hall and his successors.

Q. And that product was known as what?

A. Hall's safes, absolutely and literally.

Mr. MERRICK: I move to strike out this speech.

Q. When was the Hall Safe & Lock Company of Cincinnati organized?

A. I don't know, sir. I think it was 1895, the fall of 1895. I think it was just after the separation of the gentlemen from the Herring-Hall-Marvin Company in the fall of 1895.

Mr. MAXWELL: They didn't separate until 1896.

The WITNESS: 1896, yes.

Q. State whether or not a controversy arose soon after the organization of this company with reference to the receipt of mail at the Cincinnati Post Office?

A. Why, Mr. Aldrich, there was no particular controversy.

247 There was a notification to the various postmasters by the Messrs. Hall as to certain mail, to maintain what we construed were our rights. We notified the postmasters not only in Cincinnati, but in all cities where there were branch houses in existence and where they had been in existence, that under the bill of sale of the Hall Safe & Lock Company to the Herring-Hall-Marvin Company that the Herring-Hall-Marvin Company was entitled to that mail.

Mr. MERRICK: Do you say you did all these things? Did you do it in writing?

The WITNESS: Yes, sir.

Mr. MERRICK: Can you produce copies of those notices?

The WITNESS: Letters, yes, sir. I think I can.

Mr. MERRICK: I suggest that that be done.

Mr. ALDRICH: If counsel desires it you may get one or more of them to show the fact.

Q. What was the decision reached, state generally, at the Cincinnati office?

A. Why, the result was that the major portion of the mail was sent up to the Hamilton office, sent to the office here. Prior to the removal to Hamilton some of the Coast mail would come from Louisville, Kansas City, none from Chicago, however; we got no Hall's Safe & Lock Mail from Chicago as the postmaster construed there was an Illinois corporation by that *mail*, they were entitled to the mail and *he* adhered to that conclusion.

Q. State whether you have preserved the envelopes from 1896 on addressed to the Hall Safe & Lock Company or Hall's Safe & Lock Works?

A. The major portion of them, yes, sir.

Q. Are you able to state what number of letters thus addressed have been received from 1896 on to the present time?

A. No, sir.

Q. Notwithstanding the fact that the Ohio corporation had been dissolved?

A. No, sir, I never counted them, except for the last ten or twelve months of this year.

Q. That is twelve years after the Hall Safe & Lock Company of Chicago had been dissolved?

A. Yes, and this year I had them counted by a clerk, about two weeks ago, and my recollection was the envelopes that had been retained exceeded 1,000.

Mr. MERRICK: I object to going into this controversy between

parties not parties to this litigation, and I object to having the record encumbered with the hearsay evidence of what clerks counted with reference to a controversy that existed between the cross-
248 complainants in this state and a corporation not a party to this suit and a non-resident and out of this jurisdiction.

Mr. ALDRICH: The purpose of this questioning is to elicit the fact that the name of the old Hall Safe & Lock Company and the Hall's Safe & Lock Works is still very generally used by the public.

Q. Have you the letters thus received since 1896, or the envelopes in which such letters were contained?

A. They are in Mr. Maxwell's office. I delivered them to him yesterday.

Q. I believe they have been introduced in the Cincinnati case pending against the Hall Safe Company?

A. Yes, sir.

Mr. ALDRICH: In order that our record may be clear upon that subject, I desire the record to show that we produce the envelopes referred to, and ask counsel for the defendant in the present case, to join in the appointment of any suitable person to make a count of such envelopes and certify the same to the Examiner for use in this record.

Mr. MERRICK: Counsel in this case for defendants declines to enter into any such arrangement, because he doesn't understand that that has anything to do whatever with the controversy in issue in this case, and refuses to be a party to any such arrangement and objects to the competency and materiality of such testimony.

Q. How many such letters did I understand you to say, Mr. Pullen, had been received during the present year 1904?

Mr. MERRICK: Objected to for the same reasons as before.

A. In excess of 1,000.

Q. You may state whether or not as many or more were received each year prior to this time?

Mr. MERRICK: Objected to for the same reasons as before.

A. Why, I should judge the receipts in the prior years were in excess of the present. That would be my inference.

Mr. ALDRICH: Counsel for complainant desires to suggest to the counsel for defendant, that in view of the fact that the issues in the present case involve a question as to the general use and the value of the name Hall with reference to safe products, such issues make the use by the public, through a long course of years after the Hall Safe & Lock Company had been dissolved, an important
249 element in this case, and therefore counsel renews the suggestion that we count these envelopes and examine them, with a view of ascertaining how general this name was known and used by the public with reference to this one office alone since the dissolution of the Hall Safe & Lock Company of Ohio.

Mr. MERRICK: And the counsel for defendant begs to say, that he appreciates the courtesy of counsel for complainant, and makes the

counter suggestion, that inasmuch as the matter involved and the testimony sought to be introduced relates to a controversy that ought to be tried in another jurisdiction between the proper parties, it is highly improper that this should be introduced in this record, as anybody will very readily appreciate.

Q. Upon the organization of the Herring-Hall-Marvin Safe Company and the accession to the presidency of that company by Edward C. Hall—that is right, isn't it?

A. Yes, sir.

Q. —how were the safes marked?

A. At the time of the sell out they were marked Hall Safe & Lock Company. We had a large volume of finished stock of safes and vault doors on hand so marked, and the marking thereon remained as they had been finished. Thereafter, for a period, the name of the Herring-Hall-Marvin Company was placed upon the safes.

Q. How were the words Herring-Hall-Marvin Company made?

A. Herring-Hall-Marvin Company, Manufacturers; manufacturers of the article, whatever it was.

Q. But I mean what size of lettering and type in the different names?

A. There was a transfer prepared, I think—I am sure—under the jurisdiction of Mr. E. C. Hall, with the name, Herring-Hall-Marvin Company, the name of Herring—the name of Marvin Company was very small and the name of Hall was about twice the size of the other letters.

Q. Thus keeping, as I understand, the name Hall very prominently before the public?

A. Yes, the Herring-Hall-Marvin Company.

Q. Do you know anything about the size of the business of the defendant in this case, the Hall Safe & Lock Company of Illinois?

A. The size of it, no, sir.

Q. In your affi*ffi*davit filed upon the motion for——

The WITNESS: Wait a minute, now. You asked me the size. I presumed you meant in dollars and cents?

Mr. ALDRICH: No, I did not.

250 The WITNESS: I presumed you meant in the shape of annual amount of sales.

Q. Answer the question now.

A. Not in dollars and cents, no; as a manufacturer of safes, vault work and so forth, a very minor condition, possibly fifteen or twenty men in their shop in the basement of their establishment on Wabash Avenue.

Q. In your affidavit filed upon the motion for preliminary injunction at Chicago you quote an advertisement made by the defendant in this case in the Chicago Business Directory for the year 1903, as follows:

"HALL'S SAFE & LOCK COMPANY" (Large type.)
"Largest Manufacturers of Safes, Vaults &c in the World.
52 and 54 Wabash Avenue. Tel. Central 4517."

You may state whether that was true at any time of the defendant in this case?

A. That advertisement?
Q. Yes?
A. No sir, it was not true.
Q. Of what company could that have been said?
A. The original Hall Safe & Lock Company of which the Herring-Hall-Marvin Company were the successors.
Q. During the receivership of Gray & Pounall what relations did you hold to the business?
A. Well, I was supposed to be general manager of their Western manufacturing and sales interest. They took over the contract I had by orders of the court in Ohio and New Jersey, the Herring-Hall-Marvin Company recognizing its full tenor.
Q. That is the contract of employment?
A. Yes, sir.
Q. What were the sales of the Hall Safe & Lock Company at the time you entered the business, per annum ?
A. At the time the Hall Safe & Lock Company was amalgamated with the Herring-Hall-Marvin Company, the expert accountants scheduled the business and the average returns for three years.
Q. For what companies?
A. For all the five companies, five parties that went into the deal, the total was in excess annually, over $2,800,000.00, of which the Hall Safe & Lock Company did a business of $1,600,000.00, showing the other four did the balance.
Q. Do you know how that compares with the business of the other safe companies in the United States?
A. No, sir, only from supposition, that is all.

251 Cross-examination by Mr. MERRICK:

Q. All that you know about the statement that you have made is from these expert accountants' report, isn't that true?
A. Why, Mr. Merrick, from the time, I will say about 1879, up to 1902, I had the preparation as secretary of the company and so forth of the data by which the tax returns, the labor statistics and so forth were governed, and beginning with that period down to the time of the sale, it kept me in pretty constant touch with what the annual sales were.
Q. And you have always turned over to the officer the full amount on all that you did?
A. Pardon me, the amount of sales had nothing to do with the taxable properties. It was simply statistics for preparing the statistics for the public, not upon which a taxable return was based.
Q. You are how old now, Mr. Pullen?
A. I am in my fifty-fifth year. I will be fifty-six next October.
Q. Your memory is very good, is it not ?
A. Well, I have been told that my memory is exceptionally good.
Q. You believe that it is?
A. Well, I have credited myself with that; sometimes very little deficiency on some things, through lapse of time, but the average is—would you like me to tell you how good my memory is?
Mr. ALDRICH: Just answer the question.

The WITNESS: My memory is considered as exceptionally good by people I am in touch with.

Q. Thank you very much. You went into the safe business, as I understand you, in 1874?

A. Yes, sir.

Q. At which time the business which you went into was run under the name of the Hall Safe & Lock Company, a corporation of Ohio?

A. Yes, sir.

Q. You were then about twenty-five years of age?

A. Yes, twenty-five, I think in my twenty-fifth year.

Q. Were you married then?

A. Yes, sir.

Q. And you had theretofore married a daughter of Joseph L. Hall, the president of that company?

A. Yes, sir, in 1872.

Q. In what capacity did you begin your service with the Hall Safe & Lock Company?

A. I went into the timekeeping department of the company.

Q. Not an officer or director of the company at the beginning?

A. Not at that time.

252 Q. When did you begin to be an officer or director of the company?

A. I couldn't answer that without reference to the records, Mr. Merrick; along in the latter seventies, though.

Q. Well, approximately, five years afterwards?

A. Well, less than that.

Q. That would be the latter part of the seventies?

A. Seventy — or seventy-eight, I should judge.

Q. And you have remained continuously in the safe business, in the manufacture of safes from 1874 until the present time?

A. With the exception of a short period along in about 1875 for two or three months.

Q. You left that service and then came back, did you?

A. Yes, sir.

Q. So that you haven't any knowledge except from report or rumor, or hearsay, concerning the business prior to 1874 in any event?

A. Only in coming in contact with my associates, Mr. Hall and his sons and employés of the company.

Q. So that what you say with reference to the early history of Mr. Joseph L. Hall and his firms and concerns is from report made to you by others?

A. Not report; in conversation, general conversation.

Q. That is what I mean.

A. Yes, sir.

Q. You haven't any personal knowledge?

A. No, sir.

Q. Naturally so?

A. No, sir.

Q. When did you first become a director of the Hall Safe & Lock Company?

A. I couldn't say, Mr. Merrick, about the time I was made secre-
ry, though.
Q. About what time was that?
A. Along in the early part of the seventies. The minutes will
ow that, though.
Q. And you remained secretary until the dissolution of the Hall
fe & Lock Company?
A. Yes, sir.
Q. And that was in 1892?
A. 1892, yes, sir.
Q. How many stockholders of the Hall Safe & Lock Company of
io became directors or officers of the consolidated Company, the
erring-Hall-Marvin Safe Company?
A. Mr. E. C. Hall, Mr. W. H. Hall and myself became directors
d officers.
Q. These other Cincinnati men that you referred to in your ex-
ination in chief were not theretofore stockholders in the Hall
fe & Lock Company, were they?
A. No, sir.
Q. In 1892 where was the factory of the Hall Safe & Lock Com-
ny?
A. It was situated on the two squares bounded by Elm and
3 Central Avenue, with Plum Street intervening and Pearl and
Second Streets.
Q. How long after May, 1892, when the Hall Safe & Lock Com-
ny sold out to the combination, were the words Herring-Hall-
arvin Company painted over and upon the corporate sign, the
all Safe & Lock Company on the plant?
A. Why, Mr. Merrick, I couldn't say just how soon, but shortly
ereafter.
Q. Immediately therafter, were they not, that same summer
spring?
A. I should say that summer or fall, yes, sir.
Q. The product of the Hall Safe & Lock Company then in ex-
ence, had been in all labelled "Hall Safe & Lock Company, Cin-
nati"?
A. Yes, sir.
Q. Was there any trade mark or token or emblem, or otherwise
inted on the safes, other than the name?
A. Hall Safe & Lock Company?
Q. Yes; did they have a trade mark of any kind outside of the
ords "Hall's Standard Safes"? There was nothing outside of
at?
A. No, sir, outside of the words "Hall's Standard Safes" there was
thing.
Q. Were the words "Hall's Standard Safes" ever painted on the
fes at that time?
A. Yes, sir, a great many of them.
Q. In the year 1892?
A. I wouldn't say 1892.
Q. That is what I am asking you about.

A. Yes, in 1892, and prior to that time.

Q. They used the words "Hall's Standard Safes" on all of them?

A. Not all of them. They used "Hall's Standard Safes." That was out strong, talking point.

Q. I am asking now how you designated your product, by sign or label upon the door or outer surface of the safe?

A. "Hall's Standard Safes" was generally put on the back bar of the safe, the top bar of the safe in the back.

Q. On the front door of the safe, or upon the part of the safe surrounding the door, there was nothing upon that but Hall Safe & Lock Company, Cincinnati, was there?

A. Sometimes they put Hall's Safe & Lock Company on the top bar; sometimes they put the purchasers name there. In that event they put Hall's Safe & Lock Company across the doors.

Q. When a person's name was put on it was by special order, I suppose?

A. Yes, sir.

Q. The words Hall's Safe & Lock Company, Cincinnati,
254 O., were placed upon the safes by a method, known as transferring labels, wasn't it?

A. Yes, sir; sometimes it was painted on.

Q. Or painted on by hand or stencilled on?

A. If they wanted a special, handsome effect it was painted on, but the majority was transferred.

Q. What was done about the safes then in existence, marked Hall's Safe & Lock Company, with reference to their name after the property was sold by the Hall Safe & Lock Company to the Herring-Hall-Marvin Company; were those letters or labels, or signs, obliterated, and the words Herring-Hall-Marvin Company placed thereon?

A. No, sir, they were not obliterated. All finished stock remained as it was.

Q. And those safes were all sold with the name Hall's Safe & Lock Company still upon them?

A. I shouldn't wonder if we had some of those safes on hand yet.

Q. Just answer the question.

A. You asked me if they were all sold. There may be some on hand yet.

Q. You don't answer the question. I asked whether or not on the finished product, whether first hand or second hand, safes, was the name of Hall's Safe & Lock Company allowed to remain, or was the name Herring-Hall-Marvin Company substituted therefor?

A. Hall's Safe & Lock Company was allowed to remain.

Q. Hall's Safe & Lock Company was allowed to remain?

A. Yes, sir.

Q. And the words were not obliterated?

A. No, sir.

Q. So that there was a difference in that respect from what you did about the product with what you did about the building, that is true, is it? Do you understand me thoroughly now?

A. No, I don't understand you, because there was two or three

years' difference between the taking over certain finished safes and the painting of the building.

Q. I am talking about the safes that were in existence?

A. I thought you were talking about the buildings.

Q. I said the safes.

A. You said buildings.

Q. Pardon me, I said the product. Now listen attentively. When you sold out the Hall'- Safe & Lock Company, lock, stock and barrel, to the Herring-Hall-Marvin Company, you had, among other assets, a large number of safes, did you not?

A. Yes, sir.

Q. Those safes were labeled, the Hall Safe & Lock Company, were they not?

A. Yes, sir.

255 Q. Was anything done with those safes with reference to what appeared upon their face, with reference to signs or labels?

A. They were allowed to remain as they were.

Q. That was not true with reference to the plant, the factory, was it?

A. The plant or factory came later on.

Q. That was changed?

A. Yes, sir.

Q. Well, how much later on?

A. Well, within a reasonable time. I wouldn't say the days or the months.

Q. When the Herring-Hall-Marvin Company began the manufacture of safes, where did they have their factory?

A. They took over the Hall Safe & Lock Company plant on the squares that I have heretofore alluded to.

Q. Yes, what else did they take over?

A. They took over all their branch houses in the various cities.

Q. What factories, if any, did they take over?

A. They took over the Herring factory in New York, the Marvin Safe Factory in New York, the factory of Meyers & Smith in Philadelphia.

Q. What did they do about changing the labels or signs on plants of the Herring Company, or the Marvin Company?

A. They shut up the Marvin Safe Company's factory and moved the machinery, in large part, to the Marvin factory and the Herring factory. The Herring factory had changed to the Meyers & Smith. They shut up in due course of time.

Q. Then they shut up two factories of these five constituent factories?

A. Yes.

Q. And they ran two factories?

A. There were four factories.

Q. Meyers & Smith didn't have a factory?

A. Yes, they had, the Hall Safe & Lock Company's factory in Cincinnati, Herring & Company's factory in New York, the factory of the Marvin Safe Company in New York, and the factory of

Meyers & Smith in Philadelphia. They shut up the factory in New York, and the Meyers & Smith factory in Philadelphia.

Q. What did they do with the Meyers factory?

A. There was no Meyers factory, they were simply dealers.

Q. Now, from 1892 until 1897 what catalogs and price lists were gotten out, if any, by the Herring-Hall-Marvin Company?

A. In the West they continued to use the catalog of the Hall Safe & Lock Company, in the East the catalog of the Marvin Safe Company and Herring & Company. The Farrell people of
256 Philadelphia used largely the Herring catalog, because Mr. Farrell was really a Herring & Company affair.

Q. Then this three million dollar corporation, after it had taken over all of these companies didn't get out a catalog for five years after they were doing business; is that right?

A. Until 1897, and that pertained, Mr. Merrick, to the product that was recognized and known as the Hall's safes.

Q. That is to say the goods described in the old Hall Safe Company catalog were known as Hall's Safes?

A. Yes, sir.

Q. And the goods that were cataloged under the old Herring catalog were known as Herring safes?

A. Yes, sir.

Q. And those two safes were the only safes that the Herring-Hall-Marvin Company built during their existence?

A. No, the Marvin Safe Company had a catalog that was continued to be used by the Herring-Hall-Marvin Company.

Q. What product did they advertise?

A. The product of the Marvin Safe Company, which product was continued to be built in the Marvin factory until they closed up and the patterns were sent to the Western or Hamilton factory, and in a way the safes were continued to be built there.

Q. When was the Marvin Company closed up?

A. I think that was along in 1896, I think 1895 or 1896.

Q. Then it wasn't closed immediately after the consolidation?

A. No, sir.

Q. Then you were in error about that.

A. I didn't say it was closed. I said that was one of the factories that was closed, but I didn't mention any time or date. Don't get me confounded on that, please.

Q. I am not trying to confound you. I am trying to get at the truth.

A. That is what I am trying to do. That is something I stand very literally on.

Q. You spoke a little while ago, without going into detail at all, about some controversy that you had with A. L. Deane & Company, and observing the same desire, not to go into detail that Mr. Aldrich has shown, I will have to ask you if you mean a controversy arising out of business difficulties, that the Hall Safe & Lock Company had with A. L. Deane & Company, with reference to consigning goods; is that the controversy?

A. Yes, largely and in part.

Q. Well, which, was that the chief thing?
A. I will say that was the beginning of it, and personal acts of Mr. Donnell pertaining to myself and in enforcing it.
257 Q. Then it was a personal bitterness between you and Donnell you had reference to?
A. No, sir, not as a governing condition. I don't allow personalities to enter into my business transactions.
Q. Well, then, can you fix the date approximately as to when this bitter controversy that you have alluded to was initiated?
A. Now, wait a minute, Mr. Stenographer. Possibly the best way to get this would be to recite some of these conditions.
Q. No, I don't ask you to recite anything.
A. I want to say that what I did was as much for the protection of the Hall boys, as for the protection of my company.
Q. I am not defending or advocating the Hall boys. I am asking you for dates, if you can give them, for the purpose of fixing time when you say this controversy arose between you and A. L. Deane & Company, who are the predecessors of the defendant in this suit. I want you to get out of your mind entirely, if it is in your mind, that the Hall boys have anything to do with this examination.
A. Not at all, I recognize that.
Q. Now can you answer the question?
A. At what time do you say?
Q. Yes.
A. About the beginning of the receivership, the first part of 1898.
Q. That is the receivership of the Herring-Hall-Marvin Company?
A. Yes, sir.
Q. As I understood you, the Herring-Hall-Marvin Company went into liquidation and the receivers were appointed December, 1897?
A. I think December 27th was the date.
Q. At that time were you an officer of the Herring-Hall-Marvin Company?
A. No, sir, I was an employé of the receivers.
Q. I mean before they went into the hands of the receivers?
A. Yes, sir.
Q. You were a director, were you?
A. Yes, sir.
Q. And secretary?
A. No, sir.
Q. Were you ever secretary of the Herring-Hall-Marvin Company?
A. Yes, sir.
Q. At its inception you were secretary?
A. Yes, sir, up to, I think, 1895. The minutes will show.
Q. Where was the chief office of the Herring-Hall-Marvin Company?

A. The chief office of the Herring-Hall-Marvin Company, up to 1895, was in Cincinnati.

Q. After that time where was it?

A. It was taken down on Wall Street, the executive office on Wall Street, New York.

I forget the number on Wall Street.

258 Q. When did this receivership terminate?

A. Why, the business of the Herring-Hall-Marvin Safe Company took effect as of date December 20, 1900.

Q. So there was a period of three years in which the receivers were——

A. Yes, sir.

Q. And during the encumbency of the receivers of the first consolidated company they continued doing business right straight along?

A. Yes, sir.

Q. As receivers?

A. Yes, sir.

Q. Keeping the Herring-Hall-Marvin name as the corporate name?

A. Well, George R. Gray and Wright D. Pounall, as receivers of the Herring-Hall-Marvin Safe Company.

Q. And during that time they maintained their factory at Cincinnati, did they?

A. No, sir. The receivers, when they took hold, took hold of the factory at Hamilton. We had moved the office as of date November 1, 1897.

Q. Then before the receivers were appointed the Cincinnati factory of the Herring-Hall-Marvin Safe Company had been moved to Cincinnati?

A. The final removal of the office as of date November 1, 1897, yes, sir.

Q. Mr. Edward C. Hall was the president of the Herring-Hall-Marvin Company at the beginning of the business of that concern, was he not?

A. Yes, sir.

Q. And how long did he remain such?

A. Do you want me to refer to the minutes?

Q. Can't you tell without doing that?

A. I think it was the spring of 1895 or the fall of 1894. I am not sure which.

Q. Then what position did he hold?

A. He took the position of vice-president.

Q. And who became president?

A. I think it was Mr. Diamond.

Mr. MAXWELL: Richard Diamond.

The WITNESS: I would rather refer to the minutes, Mr. Merrick.

Mr. MERRICK: All right; I don't care.

The WITNESS: I think it was Richard Diamond.

Q. I thought your memory might be sufficient.

A. Well, there have been a good many changes about presidents vice-presidents and executive committees.

Q. Then Mr. Hall acted as vice-president from 1894 or 1895 you think, up to when?

A. Up to the date of his resignation, August 1, 1896.

Q. During the time Mr. Hall was President you were secretary, were you not?

A. Yes, sir.

259 Q. How long did you remain secretary?

A. I remained secretary up to 1896, I think it was, the annual meeting of 1896.

Q. And who succeeded you?

A. John A. Shibley, of Providence, went in as secretary *pro-tem*, and he was succeeded by a man named Lake.

Q. And Mr. William H. Hall was treasurer from the inception of the company until what time?

A. Until the time of his resignation.

Q. In 1896 or 1895?

A. I think it was in the spring of 1896.

Q. Who succeeded him?

A. John A. Shibley became treasurer some time in the latter part of 1895 or the early part of 1896.

Q. But the so-called predominating influence of the Halls and yourself, who might also be regarded as a Hall, being a brother-in-law of the Halls and a son-in-law of Joseph L. Hall, and being also predominant, had ceased, is that right?

A. The Messrs. Hall's did. I have never ceased to predominate. I am a damn big quantity.

Mr. MERRICK: I move to strike out that "damn."

The WITNESS: I don't like to be shelved, you know.

Mr. MERRICK: I am not trying to belittle you.

The WITNESS: I thought you were, sir. I have never been shelved, sir.

Q. I want to know if it is not a fact that in 1895 or 1896 the two Halls, the Hall brothers and yourself, in the offices of president, treasurer and secretary were succeeded by others and by men who had nothing to do with the Hall Safe & Lock Company at any time; isn't that so?

A. In an official capacity?

Q. Yes, certainly. You might as well admit it; there is no harm in it.

A. Not by men who had nothing to do with it, because some of these men were large stockholders in the Herring-Hall-Marvin Company.

Q. At or about that time dissensions had arisen, had they not, in the directorate of the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. Which eventuated in the retirement of the Hall brothers?

A. Yes, sir.

Q. And as you showed, by the——

A. You might add there, yes, of their own volition.

Q. I don't care how they did it. As indicated by the
260 minutes, Mr. Edward C. Hall's resignation was accepted?

A. Yes, sir.

Q. Mr. Hall had retired himself and they had been released from their contracts of employment, had they not?

A. Yes, sir, as I understand it.

Q. And they organized in 1896 a corporation known as the Hall Safe Company?

A. Why, they organized that corporation; I won't say the date, because I haven't got the data, but about that time.

Q. About that time?

A. Yes, sir.

Q. And they began shortly after that to manufacture safes?

A. They began to prepare for the manufacture of safes by the equipment of a factory.

Q. About what time did they begin the output of product?

A. I couldn't say that. I should say within a year approximately.

Q. And they ran as such for more than a year, didn't they?——

A. Yes, sir.

Q. Before any steps were taken by the Herring-Hall-Marvin Company, in court at least, to prevent the use of their name, in the safe business?

A. May I ask Mr. Maxwell for the date of his petition? He filed the papers.

Q. We discovered this morning, I think, from your examination, that it was about the 1st of December, 1897.

A. Somewhere along there.

Mr. MAXWELL: No, our bill was filed before they began operation.

Mr. MERRICK: Will counsel furnish me with the date of the filing of the bill of the Herring-Hall-Marvin Safe Company against the Hall Safe & Lock Company?

Mr. ALDRICH: Yes, we will.

Q. You are now the Acting President of the Herring-Hall-Marvin Safe Company?

A. Yes, sir.

Q. And have been for how long?

A. The last three or four months, during Mr. Tenney's indisposition.

Q. Mr. Tenney still holds the title?

A. He is the President and went to Europe, and to fill the requirements I was made acting president.

Mr. MAXWELL: Do you still want that date?

Mr. MERRICK: Yes; the date the Herring-Hall-Marvin Company filed its bill against the Hall Safe Company, Edward C.
261 Hall, William H. Hall, Charles O. Hall and others, in the Circuit Court of the United States for the Southern District of Ohio.

Mr. MAXWELL: February 19, 1897.

Q. And in the following December, after the filing of this bill, the company went into liquidation?

A. It went into the hands of receivers.

Mr. MERRICK: And counsel will concede that no order or decree of any kind was entered in that case until March, 1904, will they not?

Mr. ALDRICH: I don't think we will make any concessions on the subject. Counsel will furnish the dates of the filing of the bill and the orders, if any, in the suits.

Q. After the formation of the Illinois corporation known as the Hall Safe & Lock Company, the Herring-Hall-Marvin Company and its receivers ceased doing business with Mr. Donnell or Mr. Deane, who had been formerly dealers in their product?

A. Yes, sir, except, possibly, the closing out of some tail ends.

Q. Except collecting for a con*ass*igned safe or something of that kind?

A. Yes, sir.

Q. But the Hall Safe & Lock Company of Illinois never handled the Herring-Hall-Marvin Company's product at Chicago?

A. No, sir.

Q. Now, the Herring-Hall-Marvin Company or its receivers or the present re-organized company have never had an agency in Chicago until June, 1904, have they?

A. No direct agency, no, sir.

Q. And they had no one there dealing in their goods, safe people?

A. No, sir.

Q. Was the name Hall Safe & Lock Company, from 1892 until 1904, ever advertised save on the place of business in Chicago, other than the business conducted by A. L. Deane & Company?

A. By A. L. Deane & Company and the opening of a new establishment.

Q. In 1904?

A. Yes, sir.

Q. I understood you to say that the control of the Herring-Hall-Marvin Company from its inception was in the hands of the Hall Safe & Lock Company; do you mean to be understood on the record as affirming that fact now?

A. No, sir, not the Hall Safe & Lock Company; the gentlemen who went into the Herring-Hall-Marvin Company from the Hall Safe & Lock Company.

Q. Yes.

A. The Hall Safe & Lock Company did not control the Herring-Hall-Marvin Company, and if I so stated, it was a misappre-
262 hension. It was in the control of the officers and the people who left the Hall Safe & Lock Company and associated with the Herring-Hall-Marvin Company.

Q. Did you and the Messrs. Hall control the Herring-Hall-Marvin Company from its inception until the present time?

A. Until the present time?

Q. Yes.
A. No, sir.
Q. Well, when did that domination cease?
A. When the Hall Safe & Lock Company's business was sold out to Segur and Williams and by them to the Herring-Hall-Marvin Company, contracts were made with Messrs. E. C. Hall, W. H. Hall and myself for a period of five years,—with the privilege of five years, and as a re-enforcement of the conditions we were permitted to retain a directorship for the five years and name other directors, who were Western men, with ourselves; that would place the absolute control of the business in these parties. I will give you the names if you want them.
Q. No, we will come to that a little later, Mr. Pullen.
A. That is the control I speak of.
Q. How many directors were there in the company all-told?
A. Eleven.
Q. The Hall Safe & Lock Company furnished three out of that eleven?
A. The Hall Safe & Lock Company furnished six.
Q. They were not Hall Safe & Lock Company men?
A. They were Hall Safe & Lock Company standbys, men they named and men——
Q. Who were under their control?
A. Who would stand by the Hall contingent.
Q. How long did the six directors named stand by the Hall contingent?
A. Up to the time of the——
Q. Retirement of the Halls?
A. Up to the time the misunderstanding began, and then by consent changes were made.
Q. Isn't it a fact that misunderstanding did arise in 1895 or 1894, about the domination of the Halls and that jealousy was engendered against them?
A. Yes, sir.
Q. In the Herring-Hall-Marvin Safe Company?
A. Yes, sir.
Q. The resultant of that was that it was deemed expedient and wise by your company or directors to rehabilitate the old constituent companies and advertise your product under the separate names, isn't that true?

263 A. At that time, that was in 1895, the wording of the product took place in 1894, the winter and spring of 1893 and 1894.

Q. When did the change in reference to——
A. Along in 1895.
Q. So that, in 1895 for the first time after the taking over of the Hall Safe & Lock Company in Cincinnati by the Herring-Hall-Marvin Safe Company, the name of the Hall Safe & Lock Works was placed upon the building and products of the Herring-Hall-Marvin Company?

POOR COPY

A. What is that question?
(Question read.)
A. No, sir.
Q. Well, when was it?
A. In my minutes—in the secretary's minutes,——
Q. I am not asking you about your minutes at all.
A. I am answering your question.
Mr. ALDRICH: You can see the minutes if you desire.
The WITNESS: In my minutes of June 6, 1894, which was a year ahead of the date you mention, 1895, I advised the board that "the factories have been repainted," &c., which took place in the early spring of 1894. When the factories were repainted the words "Hall's Safe & Lock Works" were placed thereon; just a year prior to your date. That is the reason I want to refer to the minutes; page 73 of the minutes, under date June 6th, 1894.
Q. Will you read what is there?
A. "The board was advised——
Q. What is the date of the meeting?
A. The date of the meeting is June 6, 1894. The abstract from the minutes is on page 73, as follows:
"The various factories have been repainted and repairs made thereon, which the condition of the properties absolutely required."
Do you want any more?
Q. Go ahead and read the whole paragraph.
A. "The cost therefor being charged to expense, but it could be properly recognized as betterments."
Q. Is that all?
A. That is all.
Q. What does that expense refer to?
A. The expense of repainting the factories.
Q. The expense of repainting the factories?
A. Yes, the Cincinnati factory being the main factory alluded to therein.

Q. Does that refer to painting the signs or the whole of
264 the buildings?

A. Every building was painted black and every sign painted with white letters.
Q. Isn't it a fact that you are in error; that that expense was occasioned by the painting of the buildings and not painting the signs?
A. No, sir, the expense of the whole business.
Q. You are quite certain about that?
A. Yes, sir, the whole business was repainted and the signs relettered.
Q. When did you begin to label your product Hall Safe & Lock Works?
A. I should judge about the same time, Mr. Merrick.
Q. I know, but we are trying to get a little more definite information now, when will you now say?
A. Oh, about the same time.
Q. Will you now say according to your best recollection that the

product of the Herring-Hall-Marvin Company was marked Hall Safe & Lock Works, that emanated from its Western factory as early as 1894?

A. Yes, sir.

Q. During which time Edward C. Hall was president of the company?

A. Yes, sir.

Q. From 1892 to 1904 did you have any advertisement in the Chicago directories, city directory, telephone directory or other directory, or in the newspapers in which you advertised your product as the Hall Safe & Lock Company's safes?

A. I understood there was a sign there by the firm of A. L. Deane & Company.

Q. Other than that I mean?

A. No.

Q. Until June, 1904?

A. Along the last issue of the directory and the telephone directory?

Q. This last directory?

A. Yes, sir, the summer of 1904.

Q. How about the same situation with reference to advertisements in the Cincinnati directory, city and telephone and newspaper advertisements?

A. Of late years we never advertised in the Cincinnati directory.

Q. So the last time there was an advertisement of the Hall Safe & Lock Company in Cincinnati was in 1904?

A. Yes, sir, since the opening up of the Cincinnati office.

Mr. ALDRICH: Was the Cincinnati office ever closed?

The WITNESS: Oh, yes; closed when we moved from here in 1879. We opened up recently in the First National Bank building.

Q. And you moved your plant from Cincinnati in 1896 or 1897?

A. We began building in 1896 and moved the office and its force. We closed out in November, 1897, when we moved the office force there.

265 Q. When was that pamphlet issued? (Referring to and handing to the witness Cross-Complainant's Exhibit 7.)

A. Mr. Merrick, I couldn't tell you the date this was issued.

Q. Well, about when?

A. That cut, however, was prepared during the life of the Hall Safe & Lock Company and the electro cut was continued to be used on circulars like this that we got out for distributing.

Q. That was gotten out by the Hall Safe & Lock Company, wasn't it?

A. No, sir, I would say not, because if that was gotten out by the Hall Safe & Lock Company the name Hall Safe & Lock Works wouldn't appear thereon.

Q. Can you fix any date at all?

A. I would say that cut was prepared by the Hall Safe & Lock Company and was used in the preparation of circulars by the Herring-Hall-Marvin Safe Company.

Q. In other words this picture is a picture taken from a cut made by the Hall Safe & Lock Company?

A. Yes, sir.

Q. And that cut or electro-type, whatever you call it, went over with the rest of the stuff at the time of the sale and was afterwards used by you, is that right?

A. It was.

Q. So that this picture represents the condition of affairs prior to 1892?

A. The old factory, yes, sir; and that factory was continued until 1897.

Q. I understand that. Here is another undated product; can you give me any reasonable conception of about when that was born? (Referring to and handing the witness Cross-Complainant's Exhibit 6.) What have you got in your hand?

A. I was making comparisons——

Q. What is it?

A. It is a price-list. You asked me to name a date if I could. I don't want to do it haphazard.

Mr. ALDRICH: His question called on you to do it any way you can.

The WITNESS: Mr. Merrick, I should judge this list of prices, marked Hall Safe & Lock Company, exhibit 6, was printed and prepared about 1891, by the Hall Safe & Lock Company.

Q. Now I call your attention to exhibit 4, and I also ask you to compare it with exhibit 7, for the purpose of ascertaining from you whether or not that picture is made from the same electro-plate, or whatever is the technical term of the thing it is printed from.

A. Judging from the way the smoke is blowing I would say not.

Q. That is about the only difference, isn't it?

A. I would say it is a different plate entirely.

266 Q. It is the same factory, isn't it?

A. It is supposed to be the same factory, yes.

Q. And it is substantially a correct representation of the factory of the Hall Safe & Lock Company?

A. Supposed to be, yes, sir.

Q. At what date? The same date you mentioned a little while ago?

A. No, I should say, Mr. Merrick, that exhibit 4, was prepared before exhibit 7.

Q. In other words, exhibit 7 picture is a later picture than exhibit 4, is that it?

A. From the wording on the building I should say that exhibit was made prior to the cut as shown on exhibit 4.

Q. Now, let me ask you this: do you want to be understood as swearing to this fact, that either of those pictures, with absolute verity and truth, represent anything in existence at that time, or is that an embellished ornamentation of the artist to a certain extent?

A. That was created, Mr. Merrick, for a bird's eye purpose.

Q. It isn't a photograph, is it?

A. There is a deviation from the reality. As a bird's eye effect it is exceedingly close to the original conditions.

Q. But does it import verity in all its details?

A. Very closely.

Q. But not absolutely?

A. When you say "not absolutely"—very closely, because—do you want me to explain?

Q. No, when I want an explanation I will call for it. I want you to compare these two pictures; look first upon this picture and then upon that, to wit, exhibit 4 and defendant's exhibit 1 of this date, and say whether or not you think they are both taken from the same plate?

A. Both evidently taken from the same plate, Mr. Merrick, with the exception that the lettering on exhibit 4 has been changed to Hall's Safe & Lock Works, while that on your letter is Hall Safe & Lock Company.

Q. Which would you say was the later letterhead,—they are both letterheads, one marked Hall's Safe & Lock Works and one marked Herring-Hall-Marvin Safe Company.

A. From the fact that the Hall Safe & Lock Works were incorporated in February, 1894, I would say the cut of that was later than the cut on your letter.

Q. I will ask you to look at the date of defendant's exhibit 1 of this date, September 6, 1894, and ask you if you care to change your answer?

267 A. No, sir, because we may have had a big supply of these on hand and continued to use them.

Q. I will now ask you to compare cross-complainant's exhibit 4 with this paper, which we will mark defendant's exhibit 2 of this date, and ask you to state whether or not you would say they both represent the same plant and were made from the same lithograph or electro-type?

A. Yes, I would say they were, sir.

Q. You would say they were identical?

A. Yes, sir.

Q. In all respects?

A. Yes, sir; I would say they were the same.

Q. And were these the letterheads that were used at that time by your concern?

A. Yes, sir. As I say, there may have been a larger quantity——

Q. When do you say they were first gotten out?

A. Along in 1893 and 1894.

Q. I will ask you to look at the date there and ask you if you care to change your answer in any respect.

A. No, sir, from the fact that you will see that in 1894 Richard T. Pullen was manager and in 1896 —— —— was manager.

(Said letterheads shown witness were offered in evidence by counsel for defendant; were marked defendant's exhibits 1 and 2, 12/28/04, G. W. B., and the same are as follows:

(Here follow Defendant's Exhibits 1 and 2 withdrawn by leave of Court by order of June 12, 1905, and not copied here.)

Q. When were the words Hall Safe & Lock Works painted on your Cincinnati factory?

A. In the early spring, 1894.

Q. Now we will have one more comparison of this kind, please. Look at the exhibit 4 and the paper which I show you marked defendant's exhibit "C" of this date, and say whether or not you think they were both made from the same electro-type or lithograph.

A. From the same electro-type with the exception that the lettering on exhibit 4 is Hall Safe & Lock Works and the elimination of Hall Safe & Lock Company and Hall Safe & Lock Works substituted in places as shown on the respective cuts. You will notice Hall Safe & Lock Company appears in two or three places on both pictures, entirely on one and partly on the other, the Hall Safe & Lock Works appearing up here. (Indicating upon letterhead.) If you will notice, this letter has the name Joseph L. Hall, president.
268 That evidences the fact that we always have a large amount of these things on hand that are apt to be carried over into future dates.

Q. Will you please state whether or not, yes or no, any of these pictures were taken from photographs of the plant at any of the dates from 1890 to 1900?

A. I would say not from photographs.

Q. Do you know how they were gotten up?

A. My impression is they were sketched by a photographer.

Q. Did you have anything to do with it personally?

A. Mr. Merrick, I would say no. I don't call it to mind.

Said defendant's Exhibit "C" is as follows:

(Here follows Def't's Ex. "C" withdrawn by leave of Court by order of June 12, 1905, and not copied here.)

Q. That was a little outside of your department work, wasn't it?

A. We had a purchasing department, and while I was in touch with the preparation of a vast amount of details, this particular thing, I will be frank to say, was not done by me.

Q. Was there, as a matter of fact, irrespective of pictures, lithographs and everything else, at any time in 1892 the words Hall Safe & Lock Company on your Cincinnati plant?

A. Yes, sir.

Q. Where and at what places?

A. I couldn't state the exact places, but in the elimination of some of the names, the Hall Safe & Lock Company, and the substitution of the Herrin'-Hall-Marvin Company, some of the names of the Hall Safe & Lock Company were allowed to remain.

Q. Well, where?

A. One place on the side of the warehouse, as I gather from this cut.

Q. On the sides and in prominent places Hall Safe & Lock Company was *on*literated and Herring-Hall-Marvin Company was painted on, isn't that a fact?

A. On some of the buildings.

Q. Well, the great majority of them; isn't that true?

A. Yes, the great majority of them. The name Hall Safe & Lock Company, however, remained in some places.

Mr. ALDRICH: It seems to have remained pretty generally on your stationery.

The WITNESS: I shouldn't wonder if you could find that name on some of the buildings down there now.

Q. All of these constituent concerns, the five of them, when taken over, were going concerns, were they not?

A. Yes, sir.

269 Q. And it was, you say, in 1894, when they were rehabilitated and began doing business in their own names, substantially, is that a fact?

A. I didn't make such a statement, that they were rehabilitated and began doing business in their own names.

Q. You said the Hall Safe & Lock Works——

A. I said to designate the specific product of each specific thing, these names, Hall's Safe & Lock Works, Herring Safe Works, &c., were applied. There was no separate account kept governing each individual output, except the various factory——

Q. And that change grew out of the consideration of the subject in your board of directors' meetings, did it not?

A. Yes, generally canvassed.

Q. And it had been made the subject of considerable consideration, had it not?

A. Talk, yes.

Q. For some time?

A. As to the best course to pursue to maintain the identity of the past products.

Q. Did you ever see Mr. Donnell or talk with Mr. Donnell at or about the time that he incorporated the Hall Safe & Lock Company of Chicago with reference to the incorporation of that concern?

A. I may have seen him, but never spoke to him about it.

Q. Did you ever speak to him about it?

A. No, sir, not that I recall to mind.

Q. Do you recall a conversation with Mr. Donnell in 1892, shortly after the taking over of the Hall Safe & Lock Company by the Herring-Hall-Marvin Company, about the signs then in use by A. L. Deane & Company at their store in Chicago?

A. No, sir, I don't recall, 12 or 14 years ago, a thing of that kind.

Q. You couldn't recall that far back?

A. No, I would have no purpose in planting a thing of that kind in my mind.

Q. Let me refresh your recollection a little. The store they were occupying was pretty well plastered over with the name Hall, was it not?

A. Yes, sir.

Q. Do you recall suggesting to him or requesting him to remove those signs?

A. No, sir.

Q. Do you recall saying that the reason you wanted that done was

because the executive committee of your consolidated company wanted that done with reference to all the Hall Safe & Lock Company plants and stores?

A. Unqualifiedly no.

Q. Then there is nothing in that?

A. Nothing.

Q. Your conversations on the subject of the use of the Hall
270 Safe & Lock Company's name were exclusively with Mr. Deane, then?

A. Yes, sir.

Q. You say you communicated with Mr. Deane to that effect?

A. I had several talks with Mr. Deane on the subject.

Q. Did you ever write him?

A. I wrote him a personal letter.

Q. Did you keep a copy of that letter?

A. No copy of that letter was retained.

Q. That is you, Pullen, wrote a letter, not in the name of the company?

A. Yes, I wrote Mr. Deane as a friend.

Q. You didn't keep a copy of that letter?

A. No, sir; I simply led up to the question that I thought it was new, to bring about a condition that was disagreeable and led to unpleasant conditions.

Q. Were you in the habit of writing him about matters of that kind in your own behalf personally?

A. You mean in the company's interest?

A. Yes.

A. No.

Q. How did you happen to do it in this instance?

A. I esteemed Mr. Deane as a friend, and in that way I communicated with him.

Q. Can you tell me how it was that in a matter of so much moment to you personally, to your concern, you should have neglected to write, while you were an officer of the company, on company paper, in an official way, to a concern that were doing what you were complaining of personally to Mr. Deane?

A. I wasn't an officer of the company at that time.

Q. You were a stockholder and a director, weren't you?

A. I wasn't a director.

Q. Weren't you manager for the receivers?

A. Of the Hamilton factory, yes, sir.

Q. Didn't you write repeatedly to A. L. Deane & Company as manager for the receivers?

A. Yes, sir.

Q. Well, you wrote this Pullen letter to Mr. Deane personally?

A. Yes, sir.

Q. On a matter vitally affecting the interests of both concerns?

A. It was simply advising him as a friend; not as an official act at all. I have never so claimed.

Q. Who had charge, intimate personal charge for the Herring-

Hall-Marvin Safe Company of the changing of the signs, both on the plant, the stores, shops and product for your concern, in 1892?

A. Why, my recollection is that was done under the supervision of Mr. Severin Ebel, foreman of the paint department.

271 Q. What general officer or director of the Herring-Hall-Marvin Company had that in charge?

A. I don't know as it would come under any particular individual.

Q. Severin Ebel was employed by you, was he, as he had been employed by the Hall Safe & Lock Company?

A. Yes, sir. He passed to the Herring-Hall-Marvin Company.

Q. He was the foreman of the paint shop?

A. Superintendent—foreman of the paint shop.

Q. I want to ask you to examine a copy of a document purporting to have been executed by Edward C. Hall on the 12th day of May, 1892, in the presence of Louis O. Van Doren, and I will ask you, Mr. Pullen, whether or not you ever knew anything about the original or the facts referred to in that copy.

Mr. ALDRICH: Why can't we have the original, Mr. Merrick?

Mr. MERRICK: Perhaps we can, if you have and are willing to let me use temporarily, for the purpose of this record, your contract of employment dated May 12th, 1892, it will save a little time in identifying this.

(The question was read.)

A. Why, Mr. Merrick, I would take it for granted that this is a copy of the original. I saw Mr. Hall's copy, as I saw mine and his brothers'.

Q. As secretary of the Herring-Hall-Marvin Company do you recollect having had possession of it among your files?

A. No, sir, I never had this. All these original documents went through the promoters and they held on to them. I have never seen my own. It was held by them. In fact they held even the bill of sale that we called on them for.

Q. Didn't they turn all these things over to the company?

A. No, there were copies made of them——

Q. Didn't the promoters, Segur and Cox, turn over all those papers?

A. I think they were held in escrow. I have never seen mine from the date it was executed.

Q. Have you any reason to doubt that—please read it—that that is an accurate copy of the contract of employment of Edward C. Hall, as it purports to be a copy?

A. I should judge that was an exact copy of the original, from what I call to mind of that and my own, Mr. Merrick. I have got no reason to doubt it at all.

Mr. MERRICK: The contract of employment referred to reads as follows:

272 *Contract of May 12, 1892.*

"Know All Men By These Presents, That I, Edward C. Hall of the City of Cincinnati, and State of Ohio, for and in consideration of the sum of One Dollar by Herring-Hall-Marvin Company, a corporation organized under the laws of the State of New Jersey to me in hand paid, the receipt whereof is hereby acknowledged, and as a part of the consideration to induce said Herring-Hall-Marvin Company to accept and receive the conveyance to it of the property of Hall's Safe & Lock Company, a corporation organized under the laws of the State of Ohio, have agreed and do hereby covenant, promise and agree to and with the said Herring-Hall-Marvin Company, that I, the said E. C. Hall, will hold the office of President of the said Herring-Hall-Marvin Company to which I have been elected, until said May 2, 1897, and I will devote all my time and give my best endeavors to promoting the interests and business of the said Herring-Hall-Marvin Company in such office and otherwise, and that I will accept in full payment and satisfaction of and for my services to be rendered as aforesaid a salary of Seven Thousand Dollars per annum, to be payable monthly, for the first year, and at such sum not less than $7,000 as the Board of Directors may fix, in each year thereafter.

And in consideration as aforesaid, I, the said Edward C. Hall, do hereby covenant, promise and agree that I will not, so long as the Herring-Hall-Marvin Company may desire to retain my services as above, engage, either in the State of Ohio, or in the State of New Jersey, or in any of the States East of the Mississippi River, in the business of manufacturing, selling, buying or dealing in fire or burglar proof vaults and safes, or in any business or occupation such as the said corporation known as the Hall's Safe & Lock Company is authorized or empowered to engage in, or in any other business which will or may compete or interfere in any manner with the business of the said Herring-Hall-Marvin Company.

In Witness Whereof, I have hereunto set my hand and seal the 12th day of May, 1892.

(Signed) EDWARD C. HALL."

"Sealed and delivered in the presence of
LOUIS O. VAN DOREN."

Q. In the territory adjacent to Chicago, notably, in the North and West, has your company, since 1892, maintained any agencies wherein they advertise for sale the Hall Safe & Lock Company's safes and Hall's safes?

273 A. We had an agency, the Hall Safe & Lock Company, by the name of O. A. Cavan.

Q. Where?

A. At Minneapolis, and he was succeeded by a man named John J. Tobin, John J. Tobin & Company, and they continued it for a period, the limited period of the Herring-Hall-Marvin Company.

Q. By that you mean 1897?

A. 1893 to 1895, somewhere in there. They got into trouble and we closed them out.

Q. Since that time you have had no one?

A. No, sir, except a man named Max Schubert, who occasionally buys two or three safes.

Q. Have you ever at any time or place prior to this year advertised anywhere on earth Hall's Safe & Lock Company, Herring-Hall-Marvin Company, successors?

A. All of our branch houses at St. Louis, San Francisco——

Q. Where else?

A. And Hamilton, from the office here.

Q. Is that sign put on the buildings?

A. Yes, sir, Herring-Hall-Marvin Company.

Q. The same sign you have on the Chicago office to-day?

A. Not exactly in that style, no.

Q. In any style like it?

A. The name Herring-Hall-Marvin Company, successors.

Q. I am asking about the name Hall Safe & Lock Company.

A. We have left all the signs Hall's Safe & Lock Company on the buildings continuously.

Q. When were they put on?

A. Years ago.

Q. Are they still maintained as such?

A. Yes, sir. We moved from 4th street in St. Louis to Washington avenue, and we put up the name Hall Safe & Lock Company just as we took it from the old.

—. Is that sign on the Hamilton plant now, Hall Safe & Lock Company, Herring-Hall-Marvin Company, successors?

A. No; Herring-Hall-Marvin Company is on there.

Q. Have you advertised any safes Hall's Safe & Lock Company, Herring-Hall-Marvin Company, successors, at any place?

A. No, not Herring-Hall-Marvin Company, as successors. You have that turned around. Herring-Hall-Marvin Company, successors; we put it Hall's Safe & Lock Company, Herring-Hall-Marvin Company, successors. We have always announced that to the public.

Q. Have you ever had that on the Hamilton factory?

A. No; only the Herring-Hall-Marvin Safe Company.

Q. Nothing else?

A. No, nothing else.

274 Redirect examination by Mr. ALDRICH:

Q. The other Cincinnati gentlemen who were on the directory of the Herring-Hall-Marvin Company were, as I understand, connected with the First National Bank of Cincinnati, were they not?

A. Yes, sir.

Q. In what capacity? directors, were they not?

A. Yes, sir; W. S. Rose, the cashier, Joseph Rawson, Jr., was the Vice-President, and Richard Diamond was a director.

Q. If I am correctly informed there was a public subscription solicited to the combined company, was there not?

A. Yes, sir; of the stock you mean?
Q. Yes.
A. Yes, sir.
Q. This subscription was solicited through the First National Bank, was it not?
A. The subscription was not through the First National Bank. It was through the firm of Irwin, Ellis & Boardman and the First National Bank and the people it represented subscribed through Irwin, Ellis & Boardman, who were the crediting agents of the New York promoters.
Q. That made the First National Bank interested and they took a very active part in the directory?
A. Yes, and they were our friends. We did business with the First National Bank and we asked them to associate themselves as directors.
Q. In the answers you have made with reference to signs you have limited yourself to signs on the branch offices and on your principal factory?
A. Yes, sir.
Q. You have had it, as we have shown from the evidence, on your letterheads?
A. Yes, sir.
Q. On your price-lists?
A. Yes.
Q. On your catalogs and circulars?
A. On the early catalogs, yes; not on the 1897 issue of catalog.
Mr. MERRICK: Beginning when?
The WITNESS: From the time the business was taken over we used the printed matter of the Hall Safe & Lock Company.
Q. Isn't it true that you didn't use the words Herring-Hall-Marvin Company, successors, those five or six years, on any of your letterheads until as late as 1895 or 1896?
A. Along in 1894, Mr. Merrick; I think you will find my evidence says, when we prepared that amended letterhead, Her-
275 ring-Mall-Marvin Company, successors to Hall Safe & Lock Company, operating Hall Safe & Lock Company's works.
Q. When did you first, on your letterheads, use Herring-Hall-Marvin Company, Hall Safe & Lock Company, successors?
A. Along in 1894.
Q. And during all the time prior to the time you had on your letterheads the name of the original company, the Hall Safe & Lock Company?
A. On many of them, as evidenced by these letterheads here, samples of which you have seen.
Q. When the Halls went out of the Herring-Hall-Marvin Safe Company and you ceased to be secretary, you became vice-president, didn't you?
A. When?
Q. About 1896, when you ceased to be secretary you became vice-president, did you not?
A. The minutes here, the last minutes, dated August 4, 1897,

were recorded by myself as secretary; an adjourned meeting of the stockholders, &c. The meeting of August 4, 1897, an adjourned meeting of the directors, recites the fact that Stephen A. Jenks was elected president of the company and Richard T. Pullen and Frank O. Herring were elected vice-presidents of the company.

Q. And when Edward C. Hall went out in 1896, I understand, you became manager?

A. Western manager, yes, sir.

Mr. ALDRICH: I offer in evidence copies of letters as follows: Letter dated June 14, 1892, from the Herring-Hall-Marvin Company to A. L. Deane & Company, reply of A. L. Deane & Company, dated June 15, 1892, and counter-reply of Herring-Hall-Marvin Company, dated June 16, 1892.

Mr. MERRICK: There will be no question raised as to the copies.

Mr. ALDRICH: As now advised, we understand there will be no question as to their being true copies.

Said copies of letters were thereupon marked Cross Complainant's Exhibits 8, 9, 10, 12-28-04, G. W. B., and are as follows:

276 CROSS-COMPLAINANT'S EXHIBIT 8—LETTER OF JUNE 14, 1892.

(Copy.)

CIN., O., *June 14th*, 1892.

Messrs. A. L. Deane & Co., Chicago, Ill.

DEAR SIR: The Herring-Hall-Marvin Co., having purchased, acquired and entered into possession of the business, property and good will of Hall's Safe & Lock Co., the said Hall's Safe & Lock Company have arranged to go into liquidation. Therefore we desire herein to notify you that the agreement existing between the late Hall's Safe & Lock Co., and A. L. Deane & Co. is hereby terminated. All orders which have been received from you will be recognized, filled and accounted for by the Herring-Hall-Marvin Co., in accordance with the terms of the agreement as heretofore existing between your firm and the late Hall's Safe & Lock Co. A new agreement at any early date is desired between the Herring-Hall-Marvin Safe Co., and your firm. Pending the consummation of this agreement, out of courtesy, all orders which you take and send in will be recognized by the Herring-Hall-Marvin Co., on the basis of the past agreement between your firm and the late Hall's Safe & Lock Co. Contract figures will govern each and every deal pending the time necessary to effect the new contract. Our officials will leave for New York the first of the coming week, and will be absent probably a week or ten days. After their return the matter of the new contract will be entered into.

Yours respectfully,

HALL'S SAFE & LOCK CO.,
(Signed) R. T. PULLEN.
HERRING-HALL-MARVIN CO.,
(Signed) R. T. PULLEN.

CROSS-COMPLAINANT'S EXHIBIT 9—LETTER OF JUNE 15, 1892.

(Copy.)

CHICAGO, *June 15th*, 1892.

Hall's Safe & Lock Co., Cincinnati, O.

GENTLEMEN: We are in receipt of a communication signed by yourself and the Herring-Hall-Marvin Co., stating that the latter organization has assumed control at Cincinnati.

We understand from this that hereafter we are to address all communications relating to past, present and future work
277 to the new company at Cincinnati and that all invoices for goods furnished will hereafter come to us from the new company.

We also understand that our financial account with the Hall's Safe & Lock Company will close. If this is the case, please send us a memorandum showing our balance with the Hall's Safe & Lock Co. We presume the accom-odation paper which the Hall's Safe & Lock Co. secured from us will be arranged for by the new organization when the paper matures same as has been done herein the past by the Hall's Safe & Lock Co.

We understand that all goods you manufacture from and after this date will be lettered with the name of the new company or Herring-Hall-Marvin Co.

Yours very truly,

(Signed) A. L. DEANE & CO.

CROSS-COMPLAINANT'S EXHIBIT 10—LETTER OF JUNE 16, 1892.

(Copy.)

CINCINNATI, O., *June 16th*, 1892.

Messrs. A. L. Deane & Co., Chicago, Ill.

DEAR SIR: In reply to your favor of the 15th. The Herring-Hall-Marvin Co., have taken possession of the entire interests of Hall's Safe & Lock Co., and hereafter all communications should be addressed to them. Your account will be handled the same as it was with their predecessors, the Hall's Safe & Lock Co., and when the accom-odation paper matures it will be prepared for.

We have ordered new lettering for the new firm, and as soon as it is received the safes will be lettered accordingly. We are still using the blanks, etc., of Hall's Safe & Lock Co., as we have a large supply on hand and have not been able to get out a new form, but we now have them in press.

Yours truly,

HERRING-HALL-MARVIN CO.

(Signed) PULLEN.

278 *Testimony of William H. Hall.*

WILLIAM H. HALL, produced as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Your name is William H. Hall?

A. Yes, sir.

Q. You are the William H. Hall, son of Joseph L. Hall, at one time president of the Hall Safe & Lock Company, for a short time, and upon the organization of the Herring-Hall-Marvin Company, its treasurer for a certain length of time, and the William H. Hall who has been referred to in the testimony by Mr. Pullen and others in this case, are you not?

A. Yes, sir.

Q. You are a resident of Cincinnati?

A. Virtually—Glendale, a suburb.

Q. You are an officer, a director and stockholder in the Hall Safe Company, an Ohio corporation?

A. Yes, sir.

Q. About when did you first become associated in business with your father, in the Hall Safe & Lock Company, as you now recall it?

A. About 1874.

Q. And you remained continuously, did you, with that company until its dissolution in 1892?

A. With the exception of about three months, in 1874 or 1875.

Q. Were you present in New York or somewhere in the East at or about the time of the organization of the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. And you were elected, among others, one of the directors and the treasurer of the Herring-Hall-Marvin Company at that time?

A. Yes, sir.

Q. Did you remain in New York in the employment of that company or did you return to Cincinnati?

A. I returned to Cincinnati.

Q. Do you recall within a month or two the date when you returned to Cincinnati, while you were treasurer and a director, of the Herring-Hall-Marvin Company, to look after the interests of the company at this point?

A. Yes, sir, I returned the same month, in May, 1892.

Q. Do you recall or did you have anything to do with the matter of changing the names that were then upon the old Hall Safe & Lock Company plant or factory in Cincinnati?

A. Yes, sir.

279 Q. I wish you would state in your own language briefly what you did or knew concerning that work.

A. Well, in connection with Mr. Ebel, our painter-foreman, I instructed him to have the old signs painted out and new

ones, Herring-Hall-Marvin Company, painted in, for which we made a contract with an outside party, but Mr. Ebel superintended it.

Q. Was the name Hall's Safe & Lock Company painted out and the name Herring-Hall-Marvin Company, painted in wherever it appeared on the plant?

A. Yes, sir, wherever it appeared on the plant.

Q. In the matter of otherwise advertising the name of the Herring-Hall-Marvin Company in the conduct of the business of the Herring-Hall-Marvin Company, was the name Hall's Safe & Lock Company displayed, published or printed in any place or places, if so how, and when was it done?

A. No; the name Hall's Safe & Lock Company was stricken out on everything, as soon as we could get out our new stationery.

Q. When, if you recall, if at all, was the name Hall's Safe & Lock Company used in the way of advertisement or otherwise upon the stationery, buildings or product of the Herring-Hall-Marvin Company?

A. As far as I am able to judge, taking the stationery that I have seen at different times, the name Hall Safe & Lock Company was never used by the Herring-Hall-Marvin Company until after the Hall Safe Company had organized, and about that time the envelopes and letterheads of the Herring-Hall-Marvin Company had their name successors to the Hall Safe & Lock Company, operating the Hall Safe & Lock Works.

Q. That was in what year, about?

A. Well, I should judge——

Q. You said it was about the time you organized?

A. Yes, sir; either the latter part of 1896 or the first part of 1897.

Q. You made a written contract of employment with the Herring-Hall-Marvin Company, did you not?

A. Yes, sir.

Q. You haven't the original, signed copy in your possession, I take it?

A. No.

Q. I show you a paper, being a typewritten copy, purporting to be a copy of such contract; I will ask you to examine it and then state, if you can, whether or not that is a true copy of your contract of employment in question.

(Counsel hands said copy of contract to the witness.)

A. (After examining said copy of contract:) Why, so far as I know it is an exact copy of my contract.

280 Q. And you would say now that that is a true copy?

A. I would say that that is a true copy.

Mr. Merrick: I offer this copy of said contract in evidence.

Said copy of contract was thereupon marked Defendant's Exhibit 1, 12-28-04, G. W. B., and is as follows:

DEFENDANT'S EXHIBIT 1—CONTRACT OF MAY 12, 1892.

Copy.

Know all men by these presents, That I, William H. Hall, of the City of Cincinnati, and State of Ohio, for and in consideration of the sum of one dollar by Herring-Hall-Marvin Company, a corporation organized under the laws of the State of New Jersey, to me in hand paid, the receipt whereof is hereby acknowledged, and for other valuable considerations, have agreed and do hereby covenant, promise and agree to and with the said Herring-Hall-Marvin Company, that I, the said William H. Hall, will hold the office of Treasurer, of any other office of or in the said Herring-Hall-Marvin Company, to which I may be elected or appointed, until the fourth day of May, 1897, or longer if desired by said Company, and that while holding said office I will devote all my time and give my best endeavors to promoting the interests and business of the said Herring-Hall-Marvin Company in such office and otherwise, and that I will accept in full payment and satisfaction of and for my services to be rendered as aforesaid a salary of five thousand dollars per annum to be payable monthly for the first year and of such sum not less than said five thousand dollars, as the Board of Directors may fix in each year thereafter, and in consideration as aforesaid, I, the said William H. Hall, do hereby covenant promise and agree that I will not, so long as the said Herring-Hall-Marvin Company may desire to retain my services as above, engage either in the State of Ohio, or in the State of New York or in the State of New Jersey, or in any of the States east of the Mississippi river in the business of manufacturing, selling, buying or dealing in fire and burglarproof vaults or safes, or in any business or occupation such as the said corporation known as Hall's Safe and Lock Company has heretofore been engaged in, or the said Herring-Hall-Marvin Company is authorized or empowered to engage in, or in any other business which will or may compete or interfere in any manner with the business of the said Herring-Hall-Marvin Company.

281 In Witness Whereof, I have hereunto set my hand and seal the twelfth day of May, 1892.

(Signed) WILLIAM H. HALL.

Sealed and delivered in the presence of

(Signed) LOUIS O. VAN DOREN.

(Def'ts' Ex. 1, 12/28/04. G. W. B.)

Q. Acting under that contract of employment how long, if at all, did you remain in the service of the Herring-Hall-Marvin Company?

A. Until August, 1896.

Q. I show you a paper, a typewritten copy, purporting to be a copy of a letter, dated New York, June 16, 1896, and signed by

John A. Shibley, secretary of the Herring-Hall-Marvin Company, and ask you to state whether or no it is a true copy of a letter received by you in the usual course of mail from Shibley as treasurer?

A. With the exception of my own notation at the top, "this was handed to me by Wm. Mosler June 26, 1896."

Q. With the exception of the notation at the top in parentheses, that is a true copy, is it?

A. Yes, sir.

Q. I will ask you to examine the paper purporting to be a typewritten copy of letter addressed to you, signed by C. L. Lake, assistant treasurer of the Herring-Hall-Marvin Company, bearing date New York, July 2, 1896, and ask you to state, if you know, whether that is a true copy of a letter received by you from Mr. Lake in the usual course of the mail?

A. Yes.

Q. You received such a letter, did you?

A. I received such a letter.

Q. Of which that is a copy?

A. Of which that is a copy.

The said letter, Defendants' Exhibit 3, identified by the witness, is as follows:

DEFENDANT'S EXHIBIT 3—LETTER OF JULY 2, 1896.

DEF'T'S EX. 3, 12-28-04. "G. W. B."

Copy.

Herring Hall Marvin Co., Treasurer's Office, 11 Wall Street, Room 25.

NEW YORK, *July 2nd,* 1896.

Mr. William H. Hall, P. O. Box 635, Cincinnati, O.

DEAR SIR: The Executive Committee of the Herring-Hall-Marvin Co., instruct me to acknowledge receipt of your communica-
282 tion of June 29th, addressed to Mr. John A. Shibley as Secretary of the company, and to inform you that your resignation as an employee of the Herring-Hall-Marvin Company is hereby accepted, to take effect on the first day of August, 1896, and that you are hereby fully released from any or all obligation to the company under the contract of May 4th, 1892.

Respectfully yours,

C. L. LAKE, (Signed)
Ass't Treas.

Said copy of letter dated June 16, 1896, from John A. Shibley to William H. Hall was marked Defendants' Exhibit "A" and is as follows:

DEFENDANT'S EXHIBIT A—LETTER OF JUNE 16, 1896.

DEF'TS' EX. A, 12-28-04. "G. W. B."

(This was handed to me by Wm. Mosler June 26/96.)

Copy.

Herring Hall Marvin Co., Treasurer's Office, 11 Wall Street, Room 25.

NEW YORK, *June 16th*, 1896.

Mr. William H. Hall, Hall's Safe & Lock Works, #225 West Pearl Street, Cincinnati, O.

DEAR SIR: At a meeting of the Executive Committee of the Herring-Hall-Marvin Company held today, the Committee were informed of your recently expressed desire to resign your position with this company; and I am instructed by the Committee to inform you that upon receipt of your resignation, they are prepared to accept the same, and to terminate any engagement which you may be under to the Company.

Mr. William Mosler is fully empowered to accept your resignation, and to execute any document necessary on behalf of the Herring-Hall-Marvin Company to release you from any engagement to it.

Yours truly,

JOHN A. SHIBLEY, *Secretary.* (Signed)

283 Q. State, Mr. Hall, whether in pursuance or in accordance with those letters accepting your resignation, you left the service of the company on the 1st of August, 1896.

A. Yes, sir.

Q. In 1894, it has been stated here in the testimony, that the old plant formerly operated by the Hall Safe & Lock Company, was painted and the signs which had been changed in 1892 from the Hall Safe & Lock Company to the Herring-Hall-Marvin Company, were again changed to read Hall's Safe & Lock Works; will you state your best receollection of what the facts were with reference to that change and painting of that building?

A. Well, it has been stated incorrectly as regards the signs. In 1894 the buildings were repainted but the signs were not changed in 1894.

Q. When were they changed?

A. They were changed in 1895.

Q. State briefly how you recollect that fact.

A. I made the contract with the painter for changing the signs in 1895.

Q. What did you have to do, if anything, with the contract about

painting the building, leaving the signs unpainted, if that was the fact?

A. I made the contract, virtually, with the painter who painted the buildings, we furnishing the paint, but Mr. Pullen signed the contract. Mr. Pullen was then secretary of the Herring-Hall-Marvin Company.

Q. And the sign, Herring-Hall-Marvin Company, then, was not changed?

A. Was not changed.

Q. There has been offered in evidence here, as Cross-Complainant's Exhibit 4, a blank letter sheet or letterhead, without date and identified by the witness Pullen as being a representation of the factory building, operated at some time or other by the Herring-Hall-Marvin Company, upon which appears three places, in small letters, on this street (indicating) the words "Hall's Safe & Lock Works;" now, what is this street on the front where the names appear?

A. That is Pearl street.

Q. And what is the street intersecting that street?

A. Central Avenue.

Q. State whether or not at the time, in 1892, these buildings were the buildings in the plant or factory of the Hall Safe & Lock Works.

A. Yes, sir.

Q. And in 1892 and before the Herring-Hall-Marvin Company absorbed the Hall Safe & Lock Company did the words Hall's Safe & Lock Company appear on the places indicated here by the

284 words Hall's Safe & Lock Works?

A. Before the Herring-Hall-Marvin Company took it?

Q. Yes.

A. The words Hall's Safe & Lock Company appeared.

Q. And was it at these places that the name Hall Safe & Lock Company, in 1892, were obliterated by painting over the sign Herring-Hall-Marvin Company?

A. Yes, sir.

Q. Where else, if any place, on that building, was the name originally, before the Hall Safe & Lock Company dissolved,—was the sign Hall Safe & Lock Company on the building?

A. Do you want me to point out the different places?

Q. As well as you can so that we can get it into the record.

A. All of the buildings are not there.

Q. Well, what is there so far as the buildings there show?

A. The Hall Safe & Lock Company was on what is called number 4; number 3 of the Rankin building and all of the buildings that constituted the factory between Plum and Central avenue and Second and Pearl.

Q. Now, where is Plum street with reference to that picture?

A. This building. (Indicating.) That is Plum street.

Q. That is, Plum street is a street that runs through the plant east and west or north and south?

A. North and south. This building is not on the corner; consequently that sign did not appear.

Q. This is not, then, a photograph of the situation?

A. No; for the reason that this picture does not show the corner building here; it does not show the blacksmith shop there, which did not belong to the Hall Safe & Lock Company.

Q. By "there" you are referring to the second building from the upper left-hand corner of the picture?

A. Yes, as shown in the picture, this building faces on Second street.

Q. This building, the third building shown on the picture, faces Second street?

A. Faces Second street, and in the position that is shown here it faces west, when in fact it faces south.

Q. In this picture there are, in addition to the three signs which I have directed your attention to, apparently two other signs, one on the building which you call, I think, number 3 or number 4, being the building at the extreme upper left-hand corner, you will see in microscopic letters, Hall's Safe & Lock Company.

A. Yes, sir.

Q. You will also see on the building fronting on Plum street the words—the letters are so small I can barely make them out.

285 A. Whatever it is, on this building on Plum street, there was no sign on that building at all, the Laidlaw and Lund building at that time, is between that and the corner; there are no windows on this side of the building at all. (Indicating on picture.) There were no signs there.

Q. Let me see if I understand you. On all of the points indicated on this picture, irrespective of whether this picture is a correct representation of the plant as it stood at the time it was taken over by the Herring-Hall-Marvin Company, wherever the signs here appear, irrespective of what the signs show, whatever the signs were, were, as I understand from you, painted out and obliterated and the sign Herring-Hall-Marvin Company substituted therefor; is that right?

A. With one exception.

Q. What exception is that?

A. There was no sign on the west side of the building known as the Rankin building.

Q. At any time?

A. At any time; there was no windows in that side of the building.

Q. After you left the service of the Herring-Hall-Marvin Company did you take any steps personally with reference to the organization of the company with which you are now connected known as the Hall Safe Company?

A. I did.

Q. Were you one of the incorporators?

A. I was.

Q. You became one of its directors and stockholders?
A. I did.
Q. Did you at any time receive any communication, written or verbal, from the Herring-Hall-Marvin Company or any of its officers with reference to that being done?
A. So far as my memeory serves me there was nothing of the kind ever sent to either the incorporators or the Hall Safe Company.
Q. I mean, of course, Mr. Hall, other than the filing of the suit in February, 1897, to restrain you from using the name Hall.
A. I mean prior to that date.
Q. You have lived, Mr. Hall, have you, continuously in Cincinnati since 1896?
A. Except in a suburb, yes, it is virtually Cincinnati.
Q. You have lived at Glendale, but you have been doing business here practically all the time?
A. Yes, in Cincinnati.
Q. During that time and prior to that time you lived here, from 1892——
A. Oh, I was born and raised here.
Q. Have you ever seen advertised, in the newspapers or on the buildings or in the directories, either city or telephone di-
286 rectory, the name Hall Safe & Lock Company as a business institution?
A. Not until this year.
Q. This present year, 1904?
A. Yes.
Q. Do you know when the plant or factory of the Herring-Hall-Marvin Company, at one time located in Cincinnati or located in Cincinnati after 1892, for a number of years, was removed to Hamilton, Ohio?
A. Do I know when it was?
Q. Yes.
A. Well, I think it was in 1897.
Q. Your first connection with the Herring-Hall-Marvin Company was in the capacity of a director and treasurer?
A. Yes, sir.
Q. How long did you hold the position of treasurer?
A. I think until the June meeting of 1895.
Q. And you were succeeded by whom?
A. John H. Davis.
Q. Did you still remain a director?
A. Yes, sir.
Q. And you remained a director until your contract of employment was terminated in 1896?
A. Yes, sir.
Q. State whether, if at all, during that term of employment from 1892 to 1896, there was ever any discussion with reference to the use of the names of the old constituent companies upon the plants or stores or buildings operated and controlled by the Herring-Hall-Marvin Company?

A. Yes, there was a good deal of discussion during 1894 and 1895.

Q. Will you state in your own way what that discussion amounted to, how it arose and what was done as a result of that discussion.

A. I think it arose through Willis Marvin, or W. D. Marvin, I think he is called. His factory was closed either in 1893 or 1894, and of course that cut off a good deal of income from Mr. Marvin. He wanted to get even with the Western management and he began knifing to get the Western management out. He agitated the question of a voting trust, which finally went through.

Q. What was this voting trust, in brief?

A. I don't know the exact details of what it was, but Mr. Pullen described it pretty fully in his testimony yesterday.

Q. Substantially as Mr. Pullen stated yesterday?

A. Yes, sir.

Q. And this discussion, being instituted by reason of Mr. Marvin closing out the factory, the old constituent companies' names were replaced or indicated upon some of the buildings, is that the idea?

A. Not fully.

Q. What was done?

A. The old Hall Safe & Lock Company plant was lettered Hall's Safe & Lock Works.

287 Q. Well, was there a corporation of this institution of that kind in existence?

A. No, sir the name was purely fictitious.

Q. Was there anything done in the Eastern plants or factories about changing the names on the buildings?

A. Now, Mr. Merrick, I can't answer that on *by* own knowledge. Most of my time was spent here.

Q. Who are the officers and directors now and who have been for the last three or four years in the Hall Safe Company?

A. Who are the officers?

Q. And directors, yes.

A. Edward C. Hall is president; William H. Hall is vice president and treasurer; S. F. Kemper, secretary; Frank H. Clarke; a director; and E. C. Hall, Jr., a directo

Q. Are all the parties you have named connected, either by blood or by affinity, marriage, with the Hall family?

A. E. C. Hall and W. H. Hall are brothers, sons of Joseph L. Hall; E. C. Hall, Jr., is a grandson of Joseph L. Hall, and the son of E. C. Hall; S. F. Kemper and F. H. Clarke are sons-in-law of Joseph L. Hall.

Q. They married daughters of Joseph L. Hall?

A. Daughters of Joseph L. Hall and sisters to the president and vice president.

Cross-examination by Mr. ALDRICH:

Q. The business of the Hall Safe & Lock Company had been long established, as I understand from the record?

A. Yes, sir.

Q. Dating from some time in 1840?

A. No, not the Hall Safe & Lock Company. 1867.

Q. The business to which the Hall Safe & Lock Company succeeded had its foundation and origin back in 1846?

A. Back in that neighborhood.

Q. It had become a very large business at the time of this sale to the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. You heard Mr. Pullen's testimony yesterday?

A. Yes, sir.

Q. That in the statement of the sales of the constituent companies for the year prior to this so-called consolidation the Halls had about $1,600,000.00 out of a total of $2,800,000, did you not?

A. I heard his statement, yes, sir.

Q. Had you any information upon that subject prior to hearing his statement?

A. No.

Q. You heard nothing about it at that time, then?

A. I may have.

Q. By what name was the product of this business sold to
288 the Herring-Hall-Marvin Company known?

A. It was known as the Hall Safe & Lock Company's goods.

Q. Is it not a fact that it was known as Hall's safes?

A. Their product, that is their safe product was very often termed Hall's safes.

Q. When you received orders for safes by what name were they commonly designated?

A. By the number.

Q. And how described?

A. As fireproof and safe number so and so, giving the size.

Q. Well, were they not described as Hall Safes?

A. No. I say no; there might have been one case in thousands that were designated Hall's safes.

Q. In your advertising what did you call them?

A. In our advertising we used very often to call them "Hall's safes are the best."

Q. I notice that in the contract with A. L. Deane & Company, in 1886, they are required to keep the name Hall prominently before the public, notwithstanding they are given by that contract the exclusive control of certain territory as long as they work it satisfactorily to the Hall Safe & Lock Company. You recall that fact, do you not?

A. I do not, other than as all dealers would be required to keep the name Hall Safe & Lock Company or their product in front of the public.

Q. That is the fact I design to elicit, that all dealers were required to keep the name before the public?

A. I spoke in that way because I know nothing personally regarding Mr. Deane's contract.

Q. But you do know personally that that was the policy of the company with all its agents to acquire the name Hall to be kept

prominently before the public in connection with the product of the Hall Safe & Lock Company?

A. Yes, sir.

Q. The record has told us something also of the caution which was given to these agents not to advertise themselves as agents of the Hall Safe & Lock Company, but to keep their advertisements in a shape that indicated to the public that they were agents for the product, that is agents for Hall's safes?

A. I think you are wrong.

Q. In what respect?

A. They were never recognized as agents. They were dealers.

Q. In some cases they were doubtless dealers; in othr cases only agents?

A. I am only speaking of those such as A. L. Deane, and their branches. They were Hall Safe & Lock Company as much as Cincinnati was.

289 Q. Authorized to use the name Hall Safe & Lock Company and bind the company by their contracts?

A. Why, of course they were.

Mr. MAXWELL: You don't mean Deane?

The WITNESS: I am talking about the branches. That is what I spoke of last.

Mr. MERRICK: He said not Deane.

The WITNESS: I said not Deane. Deane was a dealer. The branches of the Hall Safe & Lock Company were authorized to bind the Hall Safe & Lock Company the same as any of their people here would be.

Q. When was the name Hall's Standard Safes used, and to what did it apply?

A. That is a question that I can't answer exactly, Mr. Aldrich.

Q. As near as you can?

A. Well, I should say it was in the early eighties.

Q. And how generally was it used?

A. Why, it was put on the back bar, the top bar, of the fireproof safes that went out.

Q. On any patricular type or construction or generally on the product?

A. Principally on the fireproof, or fire and burglar proof.

Q. So that also had come to be a well known name in the safe trade?

A. There is no doubt about it.

Q. The Hall Safes had maintained a good reputation up to the time of the sale to the Herring-Hall-Marvin Company?

A. Never better.

Q. And through the middle West and the Western country the trade was very large here, was it not?

A. Also through the East.

Q. Do you not think it was the largest trade in the world in the safe business?

A. Now, Mr. Aldrich, that is a leading question. I knew nothing about what the other safe men were doing.

Q. That is what you thought and claimed, was it not?

A. We would be very foolish not to brag up our own goods.

Q. You did think so, did you not?

A. We talked that way, whether we thought it or not.

Q. And isn't it a fact, Mr. Hall, that the word Hall as applied to safes had become as well and favorably known, for instance, as the word Steinway as applied to pianos?

A. Well, I don't know anything about the word Steinway. The word Hall in the safe business is a factor.

290 Q. And had come to be widely and generally known as applied to the safe business?

A. Undoubtedly.

Q. And you believe that is true likewise of the word Steinway as applied to pianos, do you not?

A. Yes, Steinway advertises.

Q. And in the same extent?

A. To a large extent.

Q. When the word Hall was used in connection with safe products or safe material, it was well understood, was it not, that reference was had in the trade to the product of the Hall Safe & Lock Company of Cincinnati, Ohio?

A. While they were in existence, yes.

Q. When you came to sell the business in 1892, you sold it as a going business, did you not?

A. Mr. Aldrich, I had nothing to do with the negotiations. E. C. Hall did it all. He passed—or he placed it before the Board of Directors and the stockholders of the Hall Safe & Lock Company; they approved his actions.

Q. Well, you knew as a member of the Hall family, and as participating in the action of the Board of Directors, that you were selling that business as a going business?

A. No doubt of it.

Q. I notice that in the bill of sale of that business, you transfer, in addition to the property and plant of the company, the trade names of the company. Do you recall that fact?

A. No, I don't recall that fact. They had no trade names other than as they made themselves. There was no trade mark or patents on any names.

Q. I am not talking about trade marks or patents; I am talking about trade names, and I have understood you to say that the word Hall had become as well identified and known in connection with safes and safe material as the word Steinway had become known in connection with the piano trade. Is it not a fact, or do you not recall that the trade names were transferred with this going business?

A. The trade name—the Hall Safe & Lock Company sold out their business to the Herring-Hall-Marvin promoters.

Q. Mr. Hall, I am not drawing any hair-splitting distinctions here.

A. I am trying to avoid that too. I didn't know that we had any trade names.

Q. Let us leave to the lawyers and to the courts the definition of what a trade name is.

A. That is all I am trying to get at.

Q. I understand that it was provided by the terms of the
291 sale that the Hall Safe & Lock Company should be dissolved?

A. Yes, sir.

Q. It was not provided by the terms of the sale that the Hall Safe & Lock Company's business, as a going business should be destroyed, was it?

A. As the Hall Safe & Lock Company it was.

Q. Well, the business.

A. That reverted to the Herring-Hall-Marvin Company.

Q. And was to be taken over by the Herring-Hall-Marvin Company as a going business?

A. As a going business.

Q. And they were to take with it whatever advantages pertained to that business, as you understand?

A. They took all of those.

Q. And they were entitled to take all of those, as you understood?

A. They did take them.

Q. But aside from the fact that they did take them you understood that they were entitled to take them?

A. Why, of course, we gave them everything that we had there.

Q. Including any trade names?

A. Now, Mr. Aldrich, I am not familiar with your technical term of trade name.

Q. It was the design, as I understand, to transfer and turn over to your successor, all the property and assets of every name and nature, and wherever situated belonging to the Hall Safe & Lock Company?

A. No, sir; no, sir; the capital stock and the stock books were not to be turned over to the Herring-Hall-Marvin Company.

Q. You misunderstand me. The capital stock was, of course, the property of the individual owners in the Hall Safe & Lock Company?

A. I know, but there was a double liability on the capital stock in the State of Ohio.

Q. Well, I read from the bill of sale that has been introduced in evidence, and after describing the manufacturing plant, machinery, tools, patterns, buildings, fixtures and so forth, it proceeds: "Trade marks, patent rights, trade rights, good will and all its property and assets of every name and nature wheresoever situated?"

A. Yes, sir.

Q. Now, in view of this quotation from the text of the bill of sale, what do you say about the intention being to turn over to your successor all the property and rights of the Hall Safe & Lock Company of every nature and description wheresoever situated?

A. I have described that, except as to the stock, that is the capital stock.

Q. It was contemplated at that time also, as shown by
292 this instrument, that that corporation should be dissolved under the Ohio law?

A. Yes, sir.
Q. And go out of business?
A. That is right.
Q. And likewise contemplated that the purchaser should succeed to the business?
A. Which they did.
Q. And upon succeeding to the business the purchaser continued to make Hall safes, did it not?
A. They didn't continue to label them Hall's safes.
Q. Let us talk about what they continued to make.
A. I know, but how you can construe it to be a Hall safe and made by the Herring-Hall-Marvin Company I fail to grasp.
Q. I notice that a great many of these cuts of your safe contains the statement "Hall's Patents"?
A. Yes.
Q. Did you have patents?
A. Oh, yes.
Q. Didn't you continue to use that statement on your safes, "Hall's patents"?
A. I suppose up to the end of the patent.
Q. And when was that?
A. Now, Mr. Aldrich, there were too many patents to try—I couldn't keep them in mind, because I don't remember the dates.
Q. Until long after the succession of the Herring-Hall-Mavin Company?
A. I don't think a great many of the patents run beyond that time. I couldn't say positively.
Q. Well, some of them ran beyond that time, did they not?
A. You can't prove that by me, Mr. Aldrich.
Q. Do you wish to be understood as saying that your patents had all expired at the time of this sale?
A. I wish to be understood as saying that I don't know whether they had or not.
Q. What is your best information upon that subject?
A. I have no information.
Q. In making this transfer you name here, among other property transferred to your successor, patent rights?
A. Yes.
Q. Did you have any patent rights, or was that a bogus claim?
A. I had nothing to do with the making of that agreement.
Q. You, as a director, voted for making it, did you not?
A. Yes.
Q. In that respect you had something to do with it?
A. I don't know what patent rights there were, if any. The records of the Herring-Hall-Marvin Company ought to show that.

293 Q. Recurring to the other subject, you continued as the Herring-Hall-Marvin Company to make safes of the same type and pattern as had been formerly made by the Hall Safe & Lock Company?
A. Yes, sir.
Q. If there were any patents owned by the Hall Safe & Lock

Company, and embrassed in this transfer and theretofore used in the manufacture of those safes, you continued to use such patent after the Herring-Hall-Marvin Company succeeded?

A. Undoubtedly.

Q. If any patents existed after the date of such succession, you continued, I presume, to mark upon your safes the statement "Hall's patents," did you not?

A. That was the supposition, yes, sir.

Q. It has appeared in the testimony here, and you have testified that your agents and dealers throughout the country were required to keep the name Hall prominently before the public in connection with the product which they were handling for the Cincinnati office was that policy changed after the succession of the Herring-Hall Marvin Company?

A. It undoubtedly was.

Q. They were told, were they, not to use the word Hall any more?

A. They were to advertise the Herring-Hall-Marvin Company.

Q. What contracts to that effect were made and with whom?

A. Well, Mr. Aldrich, I can't state that.

Q. You have stated the fact that they were to advertise the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. With whom were such contracts made?

A. That I don't know. It was out of my particular line.

Q. If the words "Hall's Safes" had come in the trade prior to this transfer, to mean a product of a certain type and kind and degree of excellence, did it mean anything different after the transfer to the Herring-Hall-Marvin Company?

A. It evidently did with Mr. Marvin. That was one of the reasons he wanted the voting trust and to dispose of the Western contingent.

Q. I will get to that. I will have the question read.

(The question was read.)

A. Why they didn't advertise Hall's safes after that to my knowledge.

Q. We have found in the testimony that at the Chicago office the same words "Hall's Safes," were kept before the public and upon the signs, and the testimony has likewise shown that that was the situation at Omaha, San Francisco, Louisville and other
294 places. Do you know that that is not so or do you deny it?

A. I don't know that it is not so. I very seldom visited the dealers or the branches. What signs they had up I can't say.

Q. It is a fact though, Mr. Hall, that the words "Hall's Safes" meant a safe of the same type and character and of the same construction after the succession of the Herring-Hall-Marvin Company that it meant while the Hall Safe & Lock Company were making the product, is it not?

A. I won't acknowledge that, because I don't believe that the

Herring-Hall-Marvin Company advertised Hall's safes in any way after taking over the company.

Q. You misunderstand my question, Mr. Hall. It isn't what they advertise; it is what was the product itself; what was the safe?

A. It was the same pattern safe.

Q. How long did the Herring-Hall-Marvin Company continue to use the same catalog as had been used by its predecessor the Hall-Safe & Lock Company, if at all?

A. My impression is—I can't speak positively because I have no access to the Herring-Hall-Marvin Company's catalogs, and have not had for some time—that they used the Hall Safe & Lock Company's catalogs only until such time as they could get out a new one.

Q. Did they get out a new one while you were an officer of the Herring-Hall-Marvin Company?

A. I think so.

Q. What makes you think so?

A. Because that was the policy of the company, to advertise the Herring-Hall-Marvin Company.

Q. Have you any recollection of getting out a new catalog?

A. I can't say that I have.

Q. Are you able to say, or do you wish to be understood as saying that Mr. Pullen is inaccurate or untruthful in stating that this catalog which has been identified as cross-complainant's Exhibit 5 under date of December 28th, continued to be used until some time in 1897?

A. I don't need to say anything about it.

Q. Is that because you know nothing about it?

A. I know nothing about it.

Q. You know nothing to the contrary, do you?

A. I know nothing to the contrary.

Q. Who would have charge of getting out a new catalog from the period of 1892 until the termination of your engagement with the company?

A. Well, I think I would have had the printing of it.

295 Q. And you have no recollection of having printed any catalog during that period?

A. I don't remember now.

Q. Are you able to state for what length of time the Herring-Hall-Marvin Company continued to use the price list, originally prepared and used by its predecessor in interest?

A. That price list—that wasn't in general use. I think that price list was used in San Francisco more than any other place. (Referring to cross-complainant's Exhibit 6.)

Q. You had different price lists from different localities in the country?

A. No, only so far as San Francisco was concerned, and they usually got out their own price lists.

Q. Is that true of the exhibit to which your attention has been directed?

A. Now, Mr. Aldrich, that is a question I can't answer.

Q. At about what period was that price list gotten out, without reference to where it was to be used.

A. I was trying to think of the time the 105 safe was started. I should judge in the early eighties.

Q. That price list refers to the 105 safe?

A. I don't mean that this catalog was printed at that time, but it was about the early eighties, I think, that the 105 safe was started. That is all on which I base my opinion.

Q. It may have been some time subsequent to that?

A. Possibly.

Q. How long, if at all, was it used by the Herring-Hall-Marvin Company?

A. Well, I don't know as to that.

Q. About how long?

A. I doubt if they used it at all. I don't know anything about this particular catalog or that particular make.

Q. What makes you doubt that they used it at all?

A. Because I don't recall to mind the Herring-Hall-Marvin Company ever stamping any if their price lists or printed matter with a rubber stamp as successors to the Hall Safe & Lock Company.

Q. Have you any knowledge that they did not do so?

A. I could not say positively; there were too many people all over the country representing the Hall Safe & Lock Company and Herring-Hall-Marvin Company both for me to say that.

Q. Too many people engaged in selling what was known as Hall's safes?

A. In selling the Herring-Hall-Marvin product.

296 Q. Hall's safes?

A. And Marvin's safes and Herring safes.

Q. In other words the combined company continued to sell the types of the several companies that entered into the combination?

A. For how long?

Q. For a considerable time, and I suppose until the present time.

A. When the Marvin factory was wrecked, you might say that was one of the things that upset Mr. Marvin, that they didn't want to use his patented safe.

Q. When was that wrecking?

A. I should judge about 1894.

Q. Up till that time at least they continued to sell Herring safes and Marvin safes and Hall safes?

A. As Herring-Hall-Marvin products.

Q. As Herring-Hall-Marvin products?

A. Yes.

Q. And if anyone ordered a Hall safe from the Herring-Hall-Marvin Company you would have known very well what he wanted, wouldn't you?

A. We would have known, but they didn't order them that way.

Q. And if he had ordered a Herring safe you would have known what he wanted?

A. They were designated by numbers.

Q. Did Farrell make a safe of any particular type?

A. Farrell made no safe at all.

Q. He was just a sales agent of the Herring people?

A. Not only of the Herring people but of the Meyers & Smith Factory.

Q. What proportion of the customers for Hall's safes purchased at the factory?

Mr. MERRICK: I object to that question as not being cross-examination. I haven't gone into that matter at all.

Mr. ALDRICH: I insist that it is cross-examination.

Mr. MERRICK: Very well. Answer over objection.

A. I couldn't say.

Q. A very small proportion, was it not?

A. That actually bought at the factory?

Q. Yes, came personally to the factory and bought at the factory?

A. Very small.

Q. A large proportion of your sales, both prior to 1892 and thereafter, were made through your sales agents or dealers, or by correspondence?

A. Yes, sir.

Q. And that required on the part of the Hall Safe & Lock
297 Company, prior to the sale, and the Herring-Hall-Marvin Company after the sale a very extensive correspondence on its part?

A. Through its different dealers and the office here, yes.

Q. The correspondence at the home office must have been very large?

A. Nothing remarkable, only so far as related to orders coming in and mail matter coming in from the branches and the dealers.

Q. It is to that that I refer?

A. Yes.

Q. I judge from the exhibits heretofore introduced in the record, showing the cut or bird's-eye view of the factory, concerning which you have been interrogated this morning, that you continued to use for a considerable time the same cut that had been used by the Hall Safe & Lock Company?

A. With the names changed.

Q. You have testified that the name was changed on the factory?

A. Yes, sir.

Q. I am now asking you how soon the names were changed on the cut shown by your letter head?

A. Why, as soon as we could conveniently do it, Mr. Aldrich, I come on from New York ahead of the president and secretary to attend to that particular part of it as soon as possible.

Q. Mr. Hall you can't mean to be understood as saying, in view of the exhibits that are in this case, that the cut on your letter heads was changed as soon as possible?

A. Mr. Aldich, I do presume to say that very thing.

Q. Now, I show you a letter, for instance, of September 6, 1894?

A. Yes, sir.

Q. More than two years after the sale, and ask you what you have to say as to your last statement in view of that letter?

A. I haven't anything to say other than this: That possibly a few of those letters were changed at the top and the names were not changed on the building, merely to get them out. As soon as we could change the names on the buildings and the balance of the names, we got them out. Now, I know whereof I speak.

Q. I want to be fair with you, Mr. Hall, and I want you to understand that I am not interrogating you with reference to the change on the buildings.

A. Yes, sir.

Q. But I am asking you about the change of the cut on your letter head.

A. I would like to have the question read.

(The question was read.)

A. The change on the buildings on the letter head is what
298 you want, isn't it, as well as the change of the name on the letter head, and that is what I referred to a little while ago.

Q. Then it is true, is it, that you continued to use the cut of the original Hall Safe & Lock Company for a considerable time after the Herring-Hall-Marvin Company succeeded?

A. Do you know anything about lithographing?

Q. I do know something.

A. That is all one cut, the building and the name—it is not a cut, it is a stone impression. Those names were changed both upon the buildings on the cut and the name above. Possibly some of them were gotten out early by just having this changed and not waiting for that. (Indicating on said cut.)

Q. When you say "by having this changed" you mean by having the words in large type, Herring-Hall-Marvin Company, printed above the picture of the factory to which reference has been made?

A. Yes, sir.

Q. If you had the name of the company as shown upon this cut changed to Herring-Hall-Marvin Company, I wish you would explain why you left in three different places on the cut the name Hall Safe & Lock Company?

A. If they did, it was an oversight. It wasn't intended at all.

Q. Why do you say it was not intended, Mr. Hall?

A. Because we were advertising the Herring-Hall-Marvin Company and no other.

Q. But you were continuing to advertise Hall's safes, were you not?

A. No, sir, we were advertising Herring-Hall-Marvin safes.

Q. Do you wish to be understood as saying that after the succession of the Herring-Hall-Marvin Company it was the policy of yourself and other officers of that company to conceal the fact that you continued the business of the Hall Safe & Lock Company and continued to sell what was known in the trade as Hall's safes?

A. We had nothing to conceal. The Herring-Hall-Marvin Company were making safes and we sold them.

Q. Making what safes?

A. The safes of all the patterns that they bought from the different companies.

Mr. ALDRICH: Read the question.

(The question was read.)

The WITNESS: You have my answer there.

Q. That you sought to obliterate the fact that you were dealers in Hall's safes, is that the meaning of your answer?

A. Not necessarily. We were running the Herring-Hall-Marvin Company and advertising the Herring-Hall-Marvin Company. There was no occasion to advertise anything else but Herring-Hall-Marvin product.

Q. I have understood you to say that you were advertising and selling what was known as the Herring safe?

A. Sure, so far as their patterns were concerned.

—. And what was known as the Hall Safe?

A. So far as their patterns were concerned.

Q. And upon the succession of the Herring-Hall-Marvin Company, did the words, Hall's safes, as applied to the product that had been known for nearly fifty years, cease to have the meaning that they originally had in your opinion?

A. Did they cease to have the meaning?

Q. Yes.

A. No, sir.

Q. The words Hall's safes meant the same thing in 1893 that they had meant early in 1892, and prior to the sale?

A. Yes, sir.

Q. Now, may it not have been a part of the design of the people who directed the change in this picture at the top of your letters used at that time to have left the name Hall's Safe & Lock Company prominent in the picture for the purpose of showing that it was the original company, notwithstanding the Herring-Hall-Marvin Company had succeeded to the business?

A. There was no purpose in that at all.

Q. You had no such purpose?

A. I had no such purpose, and I ordered the cuts.

Q. And you didn't effect the change, as is evidenced, in all instances?

A. It looks very much like it.

Q. You had cuts of a different type?

A. Yes.

Q. I will call your attention to Complainant's Exhibit 7, which has no such changes as you have been testifying to, so far as I observe?

A. That is possible. This is a different cut entirely. This is a wood cut on electrotype and that is a lithograph. Now, there may have been a series of these cuts, some leaving the name Hall Safe & Lock Company, some putting the Herring-Hall-Marvin Company on, and some Hall Safe & Lock Works. That I can't call to mind. In this case we owned the cuts.

Q. For what purpose was Exhibit 7 used?

A. The circular, do you mean?

Q. Yes.

A. To send out to parties making inquiries, for them to designate the size of safes they wanted to purchase.

Q. That is, upon inquiry from a proposed customer, you would mail that circular as a means to enable him to make a choice?

A. Yes, sir.

300 Q. How long had that wood cut, as you call it, shown on Exhibit 7, been in use by the company?

A. That particular wood cut I couldn't say anything about.

Q. It is evident, is it not, that it antedated the sale to the Herring-Hall-Marvin Company?

A. No doubt of it.

Q. Then I am to infer that from the time of the sale down to 1895, according to your testimony this morning, you continued to use the wood cut shown on Exhibit 7?

A. I didn't say that.

Q. I know that you haven't said it in express terms.

A. Because I know nothing about it, Mr. Aldrich, at this late day. They may have had quite a number of those wood cuts and they may have the cut on yet. They may use it now for all I know.

Q. And may have used it continuously from 1892 to the present time for all you know?

A. They did not, I am sure.

Q. Well, let us see. I think we have agreed that it antedated the sale to the Herring-Hall-Marvin Company, have we not?

A. This is one of the cuts that was turned over by the Hall Safe & Lock Company, yes.

Q. You haven't any doubt of that, have you?

A. I have no reason to doubt it.

Q. Haven't you any recollection upon that subject?

A. I can't recall the wood cut. You may as well ask me if I can recall three or four hundred wood cuts and pick them all out.

Q. Let us assume that it antedated, owing to the fact that the buildings are plastered all over with the words Hall's Safe & Lock Company and Hall's Safe & Lock Co., that it antedated the sale to the Herring-Hall-Marvin Company. In that I understand you to think I am correct?

A. We will say so.

Q. I have understood your testimony this morning to be that the use of the words Hall's Safe & Lock Works did not come about until 1895?

A. Yes.

Q. If then this circular was used after 1892 it was used without the words Hall's Safe & Lock Works upon it, was it not?

A. I can't say. There may have been other wood cuts that had the Herring-Hall-Marvin name on it, but there was not the same incentive to change the names on this that there would have been on a lithograph, for the simple reason we have got to mar that cut to make the changes on that cut, and on that we don't.

Q. Let us stick to this. Those words, Hall's Safe & Lock
301 Works, shown on Exhibit 7 you say dated from 1895 and not prior thereto?

A. That is my impression.

Q. Did you have anything to do with that?

A. More than likely.

Q. How generally was it used after 1895 up to the time of your resignation?

A. Now, I could refer I think to the printer that got those out, and we might get the exact quantity that were printed, but as far as memory goes, I can't say how many were printed.

Q. The fact is that it was *was* used?

A. That is evidence of it.

Q. And during your encumbency as an officer of the company?

A. That I can't say. I see no cut showing it.

Q. You have seen that the Hall Safe & Lock Works was adopted prior to the time you left the company?

A. And we have about concluded that that was printed in 1895. Now, if you have any other circulars printed in the meantime and will bring them here I will try to identify them.

Q. You didn't object to the use of that, did you?

A. I did most emphatically.

Q. When?

A. Well, in 1895 I think it was, I was doing the buying for the Herring-Hall-Marvin Company. I consulted Mr. Cochran and he told me that if I signed orders with the name Hall's Safe & Lock Works, I was personally responsible for the payment of those bills.

Q. Nevertheless the name was used by the corporation——

A. Not after that to any large extent.

Q. The name appeared, as I have understood, on the buildings?

A. Yes.

Q. And you seemed, in about 1895, to have got out literature bearing the name and advertisements.

A. Yes, that I couldn't help.

Q. In which both the names Hall's Safe & Lock Works and Hall's Safe & Lock Company appearing in numerous instances upon the buildings, were used?

A. Yes.

Q. At what time was the Hall Safe & Lock Company of Illinois organized, if you know?

A. I couldn't say as to the exact date.

Q. What consultation did you have with Mr. Donnell, or Mr. Deane, with reference to the organization of that company?

Mr. MERRICK: Objected to as not cross-examination.

A. None whatever.

Q. Were you ever present at any consultations, either in
302 New York or Cincinnati, in which you, your brother Edward and either Lawyer McDougall or Mr. Cochran were present and at which there was a discussion as to the use of the words Hall's Safe & Lock Company for the Illinois corporation?

A. In New York, did you say?
Q. Either in New York or Cincinnati.
A. I was at Cincinnati.
Q. Was that prior to the organization of the Hall Safe & Lock Company of Illinois?
A. That I couldn't say. I don't believe it was. I think it was afterwards.
Q. How certain are you upon that subject?
A. The Hall Safe & Lock Company sent in an order signed Hall's Safe & Lock Company and we took that matter up with Mr. McDougall. That is how certain I am, that the order came in signed by the Hall Safe & Lock Company before we had any consultation with him.
Q. You inferred from that that the corporation had been already organized?
A. I do.
Q. Have you any recollection of any consultation soon after the failure of A. L. Deane & Company at Chicago, in which Mr. Donnell discussed with you and your brother Edward the advisability of adopting the name Hall's Safe & Lock Company for an Illinois corporation to succeed to their business and in which it was stated that more or less mail came through the post office addressed to that name and that they could get the mail by so doing and succeed to the business? which, as dealers, they had built up?
A. I have no such recollection.
Q. Do you say that no such consultation took place?
A. I say that no such consultation took place in my presence.
Q. That you were a party to no such consultation?
A. I was a party to no such consultation.
Q. Were you ever a party to a consultation with Mr. Donnell during the negotiations looking to the sale of the Hall Safe & Lock Company to the Herring-Hall-Marvin Company, and in which it was stated to Mr. Donnell, that you were not going to sell the name Hall to the Company to be organized to take over the business, unless you got a certain price, or a larger price than then was offered?
A. I have no such recollection.
Q. Was there any such conversation in your presence?
A. Not in my presence.
Q. Was there a further conversation with Mr. Donnell in your presence, in which Mr. Edward Hall stated to Mr. Donnell
303 that they had come to his terms, that he had raised the price on them, and they had come to his terms, and under which he had sold the name to the Herring-Hall-Marvin Company?

Mr. MERRICK: I object to that as not cross-examination.

A. I have no such recollection.
Q. Was there such a conversation in your presence?
A. No, sir, not to my knowledge.
Q. You would have remembered it if there had been, wouldn't you?
A. Undoubtedly.

Q. Upon the occasion when this order came in from the Hall Safe & Lock Company, what was the occasion for any discussion?

A. Their using the name Hall Safe & Lock Company. We claimed to be the only ones that had a right to use it, the Hall Safe Company.

Q. What did you do as the result of that discussion?

A. What did we do?

Q. Yes.

A. I most emphatically opposed it.

Q. That is the use of the name by Donnell and Deane?

A. Yes, sir.

Q. Why did you oppose it?

A. Why, because it was our name.

Q. What difference does it make?

A. What difference?

Q. Yes, that they should use your name.

A. Why should they use our name or my name?

Q. Well, I want you to explain upon the record, Mr. Hall, fully your objections to the use of the name by Donnell and Deane, or Deane and Donnell.

Mr. MERRICK: I object to it as not cross-examination.

Q. And in what form you made those objections known to them?

Mr. MERRICK: And I further object to it because it isn't in the issues in this case, there being no contest on the part of the Hall Safe Company against the use of the name Hall's Safe & Lock Company in this case.

A. We were organized and incorporated under the name Hall's Safe Company and my objection to it was that they had no business to use a name so near like ours.

Q. The question asked you further, in what way you made your objections manifest to A. L. Deane & Company?

A. To A. L. Deane & Company?

Q. Yes.

A. I made no objections to them at all, because they weren't here.

304 Q. Did you communicate in any way to them your objections to the use of the name?

A. I did not.

Q. So that if you had any objections to their organization of a corporation known as the Hall Safe & Lock Company they were silent?

A. They were not silent. They were expressed to Mr. McDougall as attorney for the Hall Safe Company at that time.

Q. What instructions, if any, did you give to Mr. McDougall with reference to that?

A. I wasn't in a position to instruct him. I was a minor officer.

Q. Was there any discussion among you as to what should be done, or what would be appropriate to do under the circumstances?

A. How do you mean?

Q. In any way.

A. Do you mean to return the order?
Q. Yes, or to object——
A. We didn't return the order.
Q. Or object to the use of that name by them?
A. Mr. McDougall passed on that himself.
Q. To what effect?
A. That he saw no objection to it so far as he was concerned.
Q. About what date was this, Mr. Hall?
A. I should say the spring of the same year 1898.
Q. A. L. Deane & Company had failed prior to that time?
A. Yes, sir.
Q. They were owing you some money at that time, were they not?
A. Yes.
Q. What amount?
A. In the neighborhood of $10,000.00.
Q. What information, if any, had you in reference to the break in the relations between A. L. Deane & Company and Herring-Hall-Marvin Company?

Mr. MERRICK: I object to this as being entirely beyond the scope of the cross-examination.

The WITNESS: What is the question?
(The question was read.)
A. How do you mean, what information? That we knew they had broken with the Herring-Hall-Marvin Company?
Q. Yes.
A. I don't know that we did know that they had broken with them entirely. They wanted to handle some of our goods and we sold them to them.
Q. How long before this period had they expressed any desire to handle your goods?
A. Well, I couldn't say that without referring to our order books. That would possibly tell me.
Q. Had you had orders from A. L. Deane & Company subsequent to their failure and prior to the receipt of this order,
305 which you say came in the name of the Hall Safe & Lock Company?
A. No, sir, not until the order I speak of.
Q. The first order then, as I understand it, which you received from A. L. Deane & Company subsequent to their failure was an order in the name of the Hall Safe & Lock Company?
A. That is right.
Q. That order I understand you decided to fill?
A. Yes.
Q. How soon after that did you establish regular relations by which A. L. Deane & Company became dealers for you in the product of the Hall Safe Company of Cincinnati?
A. How soon after that?
Q. Yes.
A. A. L. Deane & Company were dealing with us long before that. You have got your question mixed.

Q. How long had you been dealing with A. L. Deane & Company prior to their failure? I mean by you the Hall Safe Company of Cincinnati?

A. I guess almost ever since we started to build safes.

Q. When did you commence the manufacture of safes?

A. Why, we turned out our first product about May, 1897.

Q. Organized your company at what time?

A. September, 1896.

Q. Had you any relations or contract with A. L. Deane & Company prior to turning out your first product?

A. No contract. We have no contract today with them, only our safes are sold to A. L. Deane at a stipulated price.

Q. What provision in the organization of the Hall Safe & Lock Company of Illinois was made for the indebtedness of A. L. Deane & Company to your people?

Mr. MERRICK: Object to that as not proper cross-examination.

A. They agreed to make a preferred stock for our indebtedness, which they did.

Q. When was that agreement made?

A. Now, I didn't look up any dates. I haven't refreshed my memory at all. It was some time after the Hall Safe & Lock Company had been running, probably, I should judge a year.

Q. Who held the preferred stock?

A. E. C. Hall and myself.

Q. For the benefit of yourselves individually, or for your company?

A. For the company.

Q. What was the capital stock of the Hall Safe & Lock Company at the time this arrangement was made?

A. I can't tell you.

306 Q. If I understand you correctly then, there was no talk with you, and so far as you know with your brothers, with reference to the proposed organization of the Hall Safe & Lock Company of Illinois prior to its organization?

A. There was no talk with me.

Q. Did you have any information that there was any talk with your brothers?

A. With the people that organized the Hall Safe & Lock Company? I did have a talk with my brother after it was organized.

Q. But so far as you know, there was no talk between Donnell and Deane and yourself, or your associates, looking to the organization of the Hall Safe & Lock Company of Illinois, prior to its organization?

A. No, sir.

Q. And so far as you know, there was no one by the name of Hall connected with that company at the time of its organization?

A. So far as I know, there was no one by the name of Hall connected with that company at the time of its organization.

Q. You people became connected with it later, as I understand?

A. Merely through our being creditors of A. L. Deane & Company.

Q. And taking preferred stock in that company to secure such indebtedness?

A. And taking preferred stock in the company to secure such indebtedness.

Q. Have you any investment in the company aside from the stock to which reference has been made?

A. No, sir.

Q. Have you the stock now?

A. Yes, sir, we have twenty shares of it.

Q. You have sold the balance, have you?

A. They redeemed it, I suppose. All we know is that we got our check from the Hall Safe & Lock Company for it.

Q. Now, I am going to read you an answer made by Mr. Donnell in his testimony at Chicago, as follows: "The talk with the Hall boys gave us their consent to organize the company. I don't remember whether it was their proposition or not that we do so, but if my memory serves me right it was." Does that answer refresh your recollection any as to the circumstances attending the organization of the Hall Safe & Lock Company of Illinois?

A. Not at all.

Q. In view of that answer by Mr. Donnell, do you desire to change your testimony upon the subject in any way?

A. Not a particle.

307 Q. What do you say as to the statement of Mr. Donnell that it was the proposition of you Hall boys that they organize a company by the name of the Hall Safe & Lock Company of Illinois?

A. I have nothing to say.

Q. Is not so, so far as you know?

A. So far as I am concerned.

Q. At the time of the sale of the Hall Safe & Lock Company of Ohio, what was the stock ownership of the several Hall heirs in the vendor company?

A. Very small.

Q. Well, each heir owned a few shares?

A. No, each heir did not. I think A. Acton Hall was the youngest one of the children, or the heirs, we will call it, who had any stock whatever. That is my impression merely.

Q. What ones, according to your impression, had no stock?

A. My impression is that Walker T. Hall had no stock; Mrs. Clarke, Mrs. Junkerman, Mrs. Kemper and Mrs. Trevor had no stock.

Q. What was the total holding of the trustees as you remember?

A. I couldn't say that.

Q. Upon the organization of the Herring-Hall-Marvin Company and the transfer of the assets of the Hall Safe & Lock Company to that corporation, I have understood from Mr. Pullen's testimony that the stock received as a consideration for the transfer was distributed to the Hall heirs; is that correct?

A. No, part of it was distributed.
Q. What portion of it was distributed?
A. I couldn't say that, Mr. Aldrich.
Q. I understood Mr. Pullen to say that the stock was distributed and the money held by the trustees?
A. There was some stock distributed. There is no doubt about that.
Q. Did each of the heirs receive some of the stock?
A. I couldn't say.
Q. Does that mean you have no information upon the subject?
A. I have no information. I wasn't a trustee.
Q. If I have understood your affidavit correctly, Mr. Hall, heretofore filed in this cause, it is your understanding, or you have been advised that you had no right to go into the business or to use the word Hall in connection with the safe business while you remained in the service of the company, but that as soon as your engagement with the company terminated you were both at liberty to go into the safe business, and to use the word Hall?
A. Why not?
Q. Is that a correct statement of your theory?
A. That is a correct statement of my theory.
308 Q. Who advised you to that effect, Mr. Hall?
A. Our attorney.
Q. What attorney?
A. Mr. W. C. Cochran.
Q. At what time did he give you that advice?
A. At the time we were talking of organizing.
Q. Why did you desire to use the word Hall?
A. Well, because our name wasn't Aldrich. That is about as near as I can get at it.
Q. Why didn't you take some arbitrary name, like the Continental Safe Company?
A. We didn't want it. We had our own name.
Q. Now, let us be candid with each other, Mr. Hall.
A. Yes, I am not going to be otherwise, Mr. Aldrich.
Q. Yes, sir, I assume that. You thought the word Hall in connection with the safe business had a peculiar value, didn't you?
A. So far as we were concerned we thought the word Hall was the best name we could use in the safe business.
Q. Let us leave out "so far as you were concerned." You knew that the word Hall in connection with the safe business had a peculiar value, didn't you?
A. For the simple reason I had been in the safe business since 1874, and it is the only business I knew.
Q. That might be a reason why you should go into the safe business when your engagement as an officer of the Herring-Hall-Marvin Company ceased.
A. Yes, sir.
Q. But I am asking you now simply whether or not you didn't know enough to know that the word Hall, owing to its long use of

more than half a century in the safe business, had a peculiar value in connection with that trade? You knew it had, didn't you?

A. Why, of course, we knew it had. I knew it had.

Q. And you desired to avail yourself of any such benefits as might pertain to that name in re-embarking in business did you not?

A. So far as my experience in the safe business was concerned, yes.

Q. And you had had sufficient experience in the safe business to be thoroughly acquainted with the value of the name as it had been used by your father and the companies with which your father and yourself and your brothers had been associated for so many years?

A. I would have been very foolish not to have known that.

Q. You could not have been ignorant of that fact, could you?

A. No, sir.

309 Q. And it was with this knowledge and because you desired to have such advantages in your new venture as the use of that name might give you, that you adopted the words Hall Safe Company, when you organized your corporation, rather than the words Continental Safe Company, or United States Safe Company, or some other arbitrary name? Isn't that the fact?

A. It is not because we had no intention of using the United States Safe Company, or any other name similar to it. We used our own name.

Q. And for the reason you have stated, that you knew your own name in connection with the safe business had a peculiar value?

A. That my own name, and that my brothers' own name all had a peculiar value in the safe business.

Q. For the reasons which you have stated on the record?

A. For the reasons which I have stated. We have all had experience in the safe business.

Q. When, if ever, did you ever consult with Donnell or Deane with reference to their advertisements that the only safes made by the Halls, and so forth, are sold by——

A. When did I ever consult with them?

Q. About such advertisements?

A. I don't know that we ever consulted with them. We issued circulars at one time in particular, calling their attention to the fact that we were not successors to anybody; we were building our own safes on our own reputation and they must advertise the goods that we sold them as the Hall Safe Company's safes.

Q. If I have understood you correctly, you didn't understand that you had any right to go into the safe business, or to use the name Hall in connection with the safe business, until after your discharge?

A. That is very plain in the contract to that effect.

Q. And that you were reinvested with the right to use the word Hall in connection with the safe business by reason of the discharge, as you were advised?

A. Not being in their employ I was no longer bound by any contract I made with them.

Q. Do you include in that statement, or did your counsel, as you understand him, include in that statement that you were no longer bound by your participation in the sale of the Herring-Hall-Marvin Company?

A. I judge that our counsel, and I know that myself, both fully understood our agreement with the Herring-Hall-Marvin Company.

Q. You may explain, if you wish to, upon the record, Mr. Hall, how it came about that you understood, either from your own judgment or that of your counsel, that you had any more right
310 to take back the use of the word Hall, than to take back the property which you had conveyed to the Herring-Hall-Marvin Company?

Mr. MERRICK: That question is objected to as improper, incompetent and immaterial.

(The question was read.)

Mr. MERRICK: I will instruct the witness it is optional with him whether he will answer the question or not. I will also advise him that he has fully covered it with answers to at least fifteen or twenty other questions.

The WITNESS: Well, I will make my answers as heretofore.

Mr. ALDRICH: I don't agree with Mr. Merrick that you have covered it by any former answers and I would like an answer to the question.

The WITNESS: If it is agreeable to Mr. Merrick——

Mr. MERRICK: I have no objection. I am advising you that you have covered it very fully, and it is only multiplying the record to make a dissertation on the subject at all.

The WITNESS: There will be no dissertation. We never gave the name Hall to take it back.

Mr. ALDRICH: That is your answer?

The WITNESS: That is my answer.

Redirect examination by Mr. MERRICK:

Q. Mr. Dougall is not living, is he?

A. No, sir.

Q. When did he die, do you remember?

A. Two or three years ago, three or four.

Q. And Mr. A. L. Deane is also dead?

A. Yes.

Q. Do you recall about when it was that he died?

A. I think it is about a year and a half ago.

Q. Well, if I should say it was almost exactly two years ago, would that be about right?

A. I would take your version of it.

Q. You were asked with reference to the use of the name Hall Safe & Lock Company in the way of designating safes and other product of the Herring-Hall-Marvin Company by Mr. Aldrich. Is it, or is it not, a matter of fact—you can answer the question yes

or no—that upon the taking over of not only the Hall Safe & Lock Company plant, but the Smith & Meyers, Farrell & Company, Herring & Company, and Marvin & Company, all of the product of the Herring-Hall-Marvin Company was designated on the product itself by putting on the sign or label or the safe doors in front, simply the words Herring-Hall-Marvin Company?

A. Yes, sir.

Q. Isn't that true?

A. Yes, sir.

311 Q. And that safes were not sold by the Herring-Hall-Marvin Company from 1892, certainly up to 1895 or 1896 by any other designation than Herring-Hall-Marvin Company? Isn't that also true?

A. Except as to size.

Q. So that upon the product of the Herring-Hall-Marvin Company, from 1892, continuously thereafter and up to the present time, safes are designated on their face door front Herring-Hall-Marvin Company?

A. All those I have seen.

Q. And all those you saw, while you were with them, without exception?

A. Yes, sir.

Q. In other words the safes were not branded Hall's safes, Hall's Safe & Lock Company's safes, Herring safes, or anybody's safes, but were simply marked Herring-Hall-Marvin Company, is that true?

A. That is true.

Recross-examination by Mr. ALDRICH:

Q. What was done with reference to the stock on hand at the time of this transfer? Do you understand that it remained painted and branded as it was, or were changes made in such stock on hand?

A. Some of them were changed. The majority of them kept the names as they were until the new transfer to the Herring-Hall-Marvin Company could be gotten in.

Mr. MERRICK: What do you mean by transfer?

The WITNESS: That is the decalcomania, as they call it; lettering reversed on paper, which is transferred to the safe and leaves the name and the paper pulls off.

Q. And the new label was put on?

A. Yes, sir.

Mr. ALDRICH: On the new safes made from that time forward?

The WITNESS: On the new safes.

Testimony of Severin Ebel.

SEVERIN EBEL, Produced as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Please state your name?
A. Severin Ebel.
Q. Where do you live?
A. 1629 Westwood Avenue.
Q. How old are you, Mr. Ebel?
A. I will be forty-nine next February.
Q. What is your business?
A. Painter.
312 Q. Were you ever employed by the old Hall Safe & Lock Company of Cincinnati?
A. Yes, sir.
Q. When that company sold out its business did you enter the employ of the Herring-Hall-Marvin Company?
A. Yes, sir, I continued on.
Q. By whom are you employed now?
A. The Hall Safe Company of Cincinnati.
Q. What was your particular line of employment in 1892 when the transfer from the Hall Safe & Lock Company to the Herring-Hall-Marvin Company was effected?
A. I had charge of the painting department, superintendent of that department.
Q. What was done, if you know, either under your direction and control or under your observation with reference to the change, if any change was made, in the signs on the buildings of the Hall Safe & Lock Company plant at Cincinnati?
A. The signs were changed in 1892 from the Hall Safe & Lock Company to the Herring-Hall-Marvin Company.
Q. On its plant?
A. On the various buildings.
Q. How was that done, just explain it briefly, how did you make the change?
A. The change was made by cutting in the signs with white and cutting out the black; that is that left a white letter with a black background.
Q. Was the name Hall's Safe & Lock Company painted out, destroyed or obliterated?
A. It was obliterated, destroyed.
Q. And the new signs, Herring-Hall-Marvin Company, was put on?
A. Yes, sir, Herring-Hall-Marvin Company was put on.
Q. When was that done, about, as you recall it?
A. Well, that was done after the change took place, right shortly after; I can't recall exactly, within a few weeks or a month, but I think it was within a month or two after the final change was made.

Q. And that was done all over the building?

A. That was done all over the building.

Q. I wish you would describe briefly the method of marking safes by the socalled decalcomania method, how do you do that? Did you have charge of that business?

A. I had charge of it. The decalcomania is simply work reproduced on prepared paper, on the reverse side of the paper, and after the design is varnished with a varnish and left to dry for some time, it is stuck onto the safe, and after that it is rubbed in smoothly so as to get a smooth surface on it; then wet it and the out-
313 side paper on which it was printed is removed by being saturated with water, and then it becomes a gold colored label.

Q. How long did you remain in the employ of the Herring-Hall-Marvin Company, beginning in 1892, May I think it was, how long did you remain with them?

A. Until May 15, 1897.

Q. During that time did you have charge of the painting and labeling and stenciling and decalcomania work for the plant of the Herring-Hall-Marvin Company here?

A. Yes, sir.

Q. How did you label the product, the safes, doors and vaults that were the output of this plant?

A. With the words Herring-Hall-Marvin Company.

Q. Anything else?

A. Cincinnati.

Q. That was all that was put on?

A. Or New York and Cincinnati, as the case may have been.

Q. Do you recall the painting of the old Hall Safe & Lock Company plant in Cincinnati two or three years subsequent to the time that they took over the Hall Safe & Lock Company plant?

A. Yes, sir.

Q. The building was painted over again, was it, or repainted?

A. All the buildings were repainted.

Q. Were the signs changed at that time?

A. Not exactly at that time.

Q. How long afterwards?

A. Oh, I should judge seven or eight or nine or ten months. The buildings were left black with white spots on for some time.

Q. Were all of the safes and vault doors and product generally of the Herring-Hall-Marvin Company, from the time you went with them till you left them painted and left in substantially the way you have indicated without exception?

A. After 1892?

Q. Yes.

A. Yes, all work that went through as new goods, new work.

Q. I have before me an affidavit made by you last November, and in it it appears that you have stated the name of the Hall Safe & Lock Works was painted over the sign Herring-Hall-Marvin Company on the plant in July, 1895. Is that the correct time?

A. Well, thereabouts. It may have been before, but about that time.

Q. When was the name Hall Safe & Lock Works, if ever, marked on the safes that were built at the factory here by the Herring-Hall-Marvin Company?

A. Well, to the best of my recollection, I don't think we
314 used them as decalcomania until about the first part of 1896, or the latter part of 1895. I am not quite certain on that.

Q. It was about that time?

A. But we used the name in 1895, prior to getting the decalcomania.

Q. All the safes were stenciled or labeled by the decalcomania method, are they?

A. Generally, most of them.

Q. That is a saving of expense, I suppose, rather than to hand paint them all?

A. Yes.

Cross-examination by Mr. ALDRICH:

Q. In what capacity do I understand you were employed in 1892?

A. As foreman of the department of painting.

Q. At what time was the Hall Safe & Lock Company sold to the Herring-Hall-Marvin Company, if you know?

A. In 1892, about May.

Q. What?

A. About May, the latter part of April or the first part of May is my recollection.

Q. When was this painting done to which you have referred, and the substitution of the name Herring-Hall-Marvin Company?

A. Well, that was done right shortly after the change had been made. I can't recall any particular month or date, but it had been made within a month or two, I should judge from what I recollect.

Q. Was it done by you or did you let the contract for the doing of it to somebody else?

A. It was done by somebody else. I had the superintending of it at the time.

Q. That contract was in writing, wasn't it?

A. I suppose so.

Q. Who has that contract?

A. I don't know where that contract has gone to.

Q. Who was the party that did the painting?

A. W. H. Winter in Cincinnati.

Q. Is he still in business here?

A. I think he is.

Q. Did you have the written contract in your possession?

A. I had it in my hands, but I really can't say whether I held it after that or not. I know that I had the use of the contract to govern his performance of the contract. There were some stipulations as to how he had to do those things.

Q. Did this contract as you recollect it refer only to the change in the signs?

A. Referred only to the change in the signs at that time, yes.

315 Q. There was no repainting of the factory buildings themselves at that time?

A. Not in 1892.

Q. How are you able to fix the date as to when the buildings were repainted?

A. Well, that is a very easy matter for me, because in 1894, in January, I had an occasion to be called on to the New York factory to make some necessary changes in regard to painting at that end, and coming back from New York, happening to have a relative of mine being a sub-foreman or assistant foreman to me in the place, took sick about two or three months after that. He died in June, but he was my mixer of those particular paints at that time for the repainting of these buildings.

Q. So the repainting of the buildings was done in 1894?

A. In 1894, in the early spring.

Q. The buildings were first painted black, were they not, when they were repainted?

A. When they were repainted?

Q. Yes, in 1894?

A. I don't know what color now. They were a muddy color. We painted them black in 1894.

Q. That is what I meant to ask you, yes, a solid black was it?

A. Well, it would come to being very nearly black. It was not a black; a muddy dark brown, made out of a peculiar mineral tint, mined in Pennsylvania.

Q. Were all of the buildings thus repainted?

A. Yes, they were all repainted.

Q. Covering the entire buildings?

A. Covering the entire buildings all told.

Q. I understood you to say you skipped the signs?

A. Skipped them.

Q. Didn't paint them?

A. We painted the places over the signs at that time.

Q. That is you covered those places with black also?

A. No, we covered those places with white, where we intended to replace the signs.

Q. In other words at that time you obliterated all sings?

A. Yes.

Q. And there were no signs on the building then after you had thus painted the building black?

A. No, not when we got through painting the buildings.

Q. For ten months, you say?

A. Well, thereabouts. I can't recall the number of months, but I know it was quite a time before we got an opportunity to get Mr. Winter to send men over to make the contract to repaint the various buildings.

316 Q. Did Mr. Winter have the contract to paint the buildings black?

A. No, a party by the name of Fronriter.

Q. And his contract did not cover the replacing of the signs?
A. No, sir.
Q. Just required him to cover the buildings——
A. With the material that we furnished him.
Q. Did you have a written contract with Mr. Winter with reference to the signs?
A. There was a contract, as far as I can recall, that he would replace those signs at a certain amount per lineal foot.
Q. Was that in writing?
A. That was in writing.
Q. Do you know where that contract is?
A. No, I couldn't say.
Q. Where did you last see it?
A. The last time I saw it was about the time when they finished up and I checked up the account, the number of feet and amount of work that he did.
Q. How are you able to state that that was in 1895, rather than 1894?
A. The relettering? Well, simply by recollection of the buildings being painted in the spring——
Q. Of 1894?
A. Of 1894, and that they had not been lettered for a long time thereafter, and I knew it was going on to good weather when we did the lettering; that is it was done in the spring of the year, because he couldn't letter them in the fall of 1894, on account of the weather being inclement to go out on scaffold work.
Q. How many signs were on this building at the time the Hall Safe & Lock Company was transferred to the Herring-Hall-Marvin Company?
A. Oh, there was quite a number on various parts of the buildings.
Q. Well, about how many?
A. I would have to enumerate the buildings. I should judge ten or twelve in various parts.
Q. I show you Defendant's Exhibit 1 of December 28th and ask you what the building is to the extreme left of the cut shown in the picture referred to?
A. That, so far as I can make out on this cut, is, as we call it, No. 4.
Q. What was that used for?
A. That was used as part of a repair shop on the lower floors and a storage room and painting and vault fitting department up stairs.
Q. It would appear from the picture that that building is a story or so higher than the one immediately next to it this way. (Indicating on the picture.)
A. Yes.
317 Q. What was the building immediately next to that?
A. That was a building that we used to consider as number 3.
Q. And for what was that used?

A. Well, they were using that also for making vault doors and fitting work, different construction of vault door work.

Q. Was there a sign above number 3 and on the wall of number 4 painted in large letters?

A. There was.

Q. Was there any sign on Number 3 on the side next to the street or the alley, as indicated by the picture?

A. Yes, there was there too.

Q. When were those signs on the doors of those two buildings changed or removed?

A. I don't know about their removal; I know when they were placed there.

Q. When were they placed there?

A. They were placed there in 1892.

Q. Those signs read Hall's Safe & Lock Company. Were they placed there in 1892?

A. I know that we placed some there. That is a long strip running down on number 3. There was a little blacksmith shop in there .

Q. Well, the one on the side wall of number 4 is clear up towards the cornice or roof, is it not, and above Number 3?

A. Yes.

Q. Was that sign, Hall Safe & Lock Company, placed there in 1892?

A. No.

Q. It had been there for a long time, hadn't it?

A. Yes, that sign was the Herring-Hall-Marvin Company.

Q. That wasn't changed, was it, at that time?

A. It was Herring-Hall-Marvin Company. They were all changed in 1892.

Q. Have you a distinct recollection, Mr. Ebel, that every sign was changed?

A. Yes.

Q. Isn't it a fact that two or three signs, perhaps were left?

A. Not to my recollection.

Q. How can you be positive on that subject?

A. Well, I had positive orders at that time that all Hall's Safe & Lock Company's signs were to be removed and Herring-Hall-Marvin Company replaced.

Q. From whom did you have those orders?

A. Mr. Hall.

Q. Which Hall?

A. Mr. William H. Hall.

Q. And are you able to state positively that they were all removed at that time?

A. Yes, sir, that is, as far as I could find them. I made every effort to find Hall's Safe & Lock Company's signs and remove them. If I missed one I didn't know it.

318 Q. Then this so-called picture of the factory, these pictures that have signs on them, Hall's Safe & Lock Works and Her-

ring-Hall-Marvin Company, and likewise have two or three signs of Hall's Safe & Lock Company are inaccurate, are they?

A. As to dates of the changes they are, because——

Q. Well, I show you cross-complainant's Exhibit 4. You will see that this picture has Hall's Safe & Lock Works put upon it, which, as I understand, was put there in 1894 or 1895, one or the other?

A. Yes.

Q. And it also has on building Number 4, and also on the side of building number 3, the same old sign Hall's Safe & Lock Company?

A. That is beyond my sight. I can't see what is on that number 3.

Q. You can see what is on number 4, can't you?

A. But nevertheless I can say this: I really never paid any attention to any of the stationery that had been used, in fact I never did pay any attention—I used the stationery, but I didn't really pay much attention as to the peculiar lettering or signs upon the signs.

Q. The other buildings were subsequent to 1894, or 1895, whichever it may be, lettered as the picture shows, Hall's Safe & Lock Works, were they not?

A. Yes, in the latter part of 1894, or in the spring of 1895, yes, sir, all of them.

Q. How does it come, in the two places I have indicated on buildings number 4 and number 3, the old name Hall's Safe & Lock Company remains?

A. That is beyond my comprehension. I can't say how that happened.

Q. When did you first know of the use of the words Hall's Safe & Lock Works?

A. Well, it was explained to me that the various manufacturers that have been concerned in this combination, or new form of the different companies had consented to use the various names of the old firms and I was ordered to put on, from a certain date, the words Hall's Safe & Lock Works.

Q. That was either in 1894, or 1895?

A. Yes, the latter part of 1894, I think it was.

Q. I show you another picture which is Complainant's Exhibit 7, which is a wood cut, that has in large type on it Hall's Safe & Lock Works, but in which all of the buildings have the name still Hall's Safe & Lock Company. I will ask you what, if any, knowledge you had of the use of that advertisement or circular. You have seen it, haven't you?

A. Oh, I may have seen the circular, yes, but I can't recall any particular points about the signs.

319 Q. You can see now that the sign on building number 3 next to the street or alley was Hall's Safe & Lock Company?

A. Yes, I can see that. Yes, this is a very old cut, it strikes me, and I don't know much about that. (Indicating Exhibit 7.)

Q. At the time of the transfer by the Hall's Safe & Lock Com-

pany, I infer from the bill of sale that there was a very large stock of completed safes on hand, was there not, Mr. Ebel?

A. Yes, there was.

Q. They had already been marked prior to the sale, when they went into the warerooms, as completed product?

A. They were marked the Hall Safe & Lock Company.

Q. Those that were so marked were not remarked, but the Herring-Hall-Marvin Company sold them with their original names on them, did they not?

A. Some of them were remarked; on some the names were taken off.

Q. Not all, many of them?

A. Well, on some; it would depend on the locality they went. If they went east they were marked Herring-Hall-Marvin Company. Some of them that went to the Western territory were left as they were. As a matter of course those safes that went East were supposed to be better known as the Herring-Hall-Marvin product. The people in the West didn't know so much about Herring.

Q. But they knew a great deal about Hall's?

A. I suppose they did because Hall was in existence a great many years in the West.

Q. Do you know anything about whether the company at the time of the transfer had any patents and was accustomed to put on the safes manufactured by it at Cincinnati, the words "Hall's Patents," as indicated on the picture which I show you?

Mr. MERRICK: Objected to as not cross-examination.

Mr. ALDRICH: It is what he marked on the safes.

Mr. MERRICK: I didn't ask him anything about what he marked on the safes.

A. Yes, we used the words "Hall's Patent," but not much after the transfer of the companies. I don't know—I hardly recollect that there were many used. I don't think there were but a few used after that with the words "Hall's Patent."

Q. Prior to that time had the words "Hall's Patent" been placed on all the safes manufactured by you?

A. No, sir.

Q. Only on part of them?

A. Only on part of them.

320 Q. I noticed that on Exhibit 7 the safe pictured on the first page has the words "Hall's Patent" on the inside of the door, and the picture shown on the last page of Exhibit 7, does not have the words "Hall's Patent" on it, as I understand. Why was this distinction in painting, Mr. Ebel?

A. Well, that is a matter prior to any transfer of the companies, all these things. The words "Hall's Patent" on the inside of these various safes for a certain number of years have been used, as Hall's fireproof safes, and that happening to be run out before this transfer was made, was discontinued.

Q. What kind of safes is it that is shown on the first page of the exhibit referred to?

A. A fireproof safe.

Q. What kind of safe is that shown on the last page?

A. A fire and burglar proof.

Q. The fire and burglar proof on the last page has no such designation?

A. It is not so shown here, but it was one of Hall's safes prior to the transfer.

Q. Was the painting and appearance of the safe other than the difference between the Hall Safe & Lock Company and Herring-Hall-Marvin Company, the difference in names the same after as before?

A. The same except the difference in names.

Q. There are fancy designs, I notice, on the safe and scroll work, especially calling your attention to the designs on the covers on the last page of Exhibit 7?

A. Yes, sir.

Q. Were those continued after the Herring-Hall-Marvin Company came in?

A. Yes, to some extent. These cuts were not always a criterion as to the general finish of the safe.

Q. But in a general way, the appearance of the safe other than the name on it was the same afterward as before, was it not?

A. Yes, sir, no difference except the name.

Q. How are you able to fix the date when the name, Herring-Hall-Marvin Company was painted out and the name of Hall's Safe & Lock Works painted on the factory at Cincinnati?

A. How am I able to fix the time?

Q. Yes.

A. Well, I am able to do it in this way; Because I am positive the factory was repainted in 1894, in the very early spring, somewhere beginning with February down to March, and that the white spaces that we designated as spots for signs, were left open for the reason that we couldn't get Mr. Winter to find time to send his particular man over to do that work in the time we wanted it, and during that time very likely this change of name had taken place, and we then deferred it until they finally fixed the name of Hall's
321 Safe & Lock Works. That is about the way I fix my recollection.

Q. In what month was that, that that was painted in, Hall's Safe & Lock Works?

A. That time is not definite with me. I think it was done in the spring of 1895. I am pretty sure of that.

Recess until 2 o'clock P. M.

DECEMBER 29, 1904—2 o'clock, p. m.

Parties met after recess.
Present as before.

Testimony of Edward C. Hall.

EDWARD C. HALL, produced as a witness in behalf of defendants, having been first duly sworn, testifies as follows:

Direct examination by Mr. MERRICK:

Q. State your name?
A. Edward C. Hall.
Q. You are the Edward C. Hall who has been referred to in the testimony in this record as the son of Joseph L. Hall, at one time president of the Hall Safe & Lock Company, and the first president of the Herring-Hall-Marvin Company, are you not?
A. Yes, sir.
Q. What is your age?
A. Fifty-four.
Q. How long have you been engaged in the safe business, the manufacture and sale of safes?
A. Well, almost ever since I could toddle. I left school in 1868 and went to work in the safe business and worked at it off and on long before that.
Q. You are the oldest son of Joseph L. Hall?
A. Yes, sir.
Q. Who was at the time of his death president of the Hall Safe & Lock Company?
A. Yes, sir.
Q. And your father, Joseph L. Hall, died in 1889, I think?
A. Yes, sir.
Q. You are thoroughly familiar with the construction of safes, as well as the office part of the business I take it?
A. Yes, sir.
Q. Have you ever been engaged in any other business?
A. Not directly, no, sir. I have been interested in other business.
Q. Have you since your early manhood, since you have been a business man, been engaged in this business of manufacturing and selling safes?
A. Yes, sir.
322 Q. And that is substantially true of your brother, William H. Hall, is it not?
A. Yes, sir.
Q. You represented your company, and by "your company" I mean now the Hall Safe & Lock Company, in 1892, in the negotiations leading up to the transfer of that plant and business to the combined company known as the Herring-Hall-Marvin Company, did you not?
A. Yes, sir.
Q. And state whether or not in the negotiations, and connected therewith, you also were negotiating with reference to your employ-

ent by the Herring-Hall-Marvin Company, as an employé or offi-
r or director, all part of the same transaction, wasn't it?
A. Yes, sir.
Q. And of course you handled that, your own services, as well as
e selling out of the plant?
A. Yes, sir.
Q. Contemporaneously, about this same time, your brother Wil-
am H. Hall, and your brother-in-law, Pullen, were also negotia-
ng with reference to their employment; it was one negotiation, was
not?
A. Yes, sir.
Q. The result of that negotiation was the sale to the promoters,
egur & Cox, which has been referred to in evidence, and by them,
turn, to the Herring-Hall-Marvin Company?
A. Yes, sir.
Q. At the first meeting of the stockholders of this new company,
e Herring-Hall-Marvin Company, you were elected one of the
leven directors and the president of the company, were you not?
A. Yes, sir.
Q. Have you with you, or can you produce, the original contract
f employment signed by you, whereby you entered the employment
f the Herring-Hall-Marvin Company?
A. No, sir.
Q. Have you a copy of that contract?
A. I have in my safe, yes, sir.
Q. I have just shown you a portion of an affidavit made by you
hich has been filed of record in this case, wherein appears, among
ther things, what purports to be a copy of a contract made by you
r signed by you May 12, 1892, and I will ask you if that is a correct
opy of the original contract of employment referred to a few mo-
ents ago?
A. It is.
Q. How long did you continue to devote your services to the
lerring-Hall-Marvin Company under that contract?
A. Until 1895, I think December, 1895, at the time the voting
rust, or April, 1896. I don't remember which.
Q. In any event you remained then as president of this
23 company and a director of the company until some time in
1895?
A. I think so.
Q. What month, do you recall?
A. No, I don't recall.
Q. Then what happened so far as you were personally concerned
s an officer or employé of the company, meaning by that whether
r not did you occupy any other position with the company?
A. I consented, with the Eastern directors, who were influenced
y the Wall Street men, to have an apparent change in the com-
any, in the management on account of default in dividends, and
Ir. Diamond was elected president.
Q. And were you elected to any office?
A. Vice president.

Q. How long did you continue to hold the office of vice president?
A. I think pretty close to a year.
Q. When did you retire from the service of the Herring-Hall-Marvin Company?
A. First of August, 1896.
Q. In pursuance of what action, if any, on your part and on the part of the company? In order to put it more briefly, state whether or not you tendered your resignation and whether the same was accepted?
A. I tendered my resignation and the same was accepted.
Q. And you were notified of its acceptance, were you, verbally or in writing, do you recall it?
A. I don't recall that.
Q. It appears from the record in this case, in the examination of Mr. Pullen, who read an extract from the minutes of the company; that by a resolution adopted at some time in February, 1896, your resignation was accepted. Does that accord with your recollection of the fact?
A. Yes, sir.
Q. This Board of Directors of which you were one, consisted of eleven all told?
A. Yes, sir.
Q. The resolution to which I have just alluded, is a resolution under date of July 8, 1896, being a resolution of the Board of Directors, as follows:
"Resolved, That the resignation of Mr. Edward C. Hall as an officer and employé of this company be and is hereby accepted, to take effect from the first day of August, 1896, and that the Executive Committee are hereby empowered to enter into any negotiations and conclude any arrangement with Mr. Hall, which, in the judgment of the committee, may be to the interests of this company."
Does that accord with your judgment as to the time you severed your connection with the company?
A. Yes, sir.
324 Q. You made no subsequent arrangement with them to remain in their employment?
A. No, sir.
Q. During the time that you were president and vice president of the Herring-Hall-Marvin Company, where were your headquarters?
A. Cincinnati.
Q. You occasionally visited the New York office, I take it?
A. Very frequently.
Q. They had a fiscal office in New York, did they?
A. Not in the early part; towards the last, after the voting trust had possession of the company, they opened up an office there.
Q. The chief office theretofore had been here, had it?
A. Yes, sir.
Q. When was this voting trust that you now refer to, organized?
A. I think it was in December, 1895, if I am not mistaken. I don't just remember now.
Q. Prior to that time, under the by-laws of the company, there

was in existence what was known as an executive committee, was there not?

A. Yes, sir.

Q. Were you ever a member of that executive committee?

A. Yes, sir, I was chairman of the executive committee.

Q. Beginning at what time?

A. Some time in May, 1892.

Q. And you remained such for how long, a member of that committee?

A. Up to the time that I left the company.

Q. Up to the time that you left the company.

A. Yes, sir.

Q. Who composed, if you know, the executive committee succeeding your term?

A. I don't know, only from hearsay.

Q. I think there will be no objection to your stating it. Is it in accordance with Mr. Pullen's statement?

A. Yes, sir; the two Moslers and Mr. Carpenter.

Q. Upon the sale of the plant of the Hall Safe & Lock Company in Cincinnati, in May, 1892, state what was done in reference to the management of the business of the old Hall Safe & Lock Company, as to whether or not that company was dissolved. Was the old Hall Safe & Lock Company dissolved?

A. It was.

Q. Did you have anything to do with reference to that?

A. I was the receiver for the winding up of the company, yes, sir.

Q. Your brother, William H. Hall, had prior to May, 1892, become the president of the Hall Safe & Lock Company and executed the contract of sale, or bill of sale to the promoters, Segur & Cox I believe.

A. Yes, sir.

325 Q. And in pursuance of that contract, and in accordance with its terms, you proceeded as one of the original directors and stockholders of the Hall Safe & Lock Company to effect its dissolution according to the laws of the State of Ohio?

A. Yes, sir.

Q. And in due course of time that was done?

A. Yes, sir.

Q. The record of which appears on file here?

A. Yes, sir.

Q. In the County of Hamilton, State of Ohio?

A. Yes, sir.

Q. Mr. Hall, what was done in reference to the management of the plant of the old Hall Safe & Lock Company here in Cincinnati, and its product, with reference to the conduct of its business under the new management of the consolidated concern, notably with reference to the signs under which the business was done, or the labeling or stenciling under which the product was put out; state it in your own language briefly.

A. We immediately gave orders to change all the signs to Her-

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ring-Hall-Marvin Company and do business in the name of He
ring-Hall-Marvin Company, as per contract.

Q. And was that order carried out?

A. Yes, sir.

Q. How soon after the 12th day of May, which is the date I thin
of the sale, were the signs changed? I don't mean what day
the month, but was it immediately?

A. It was immediately, as soon as we got home.

Q. So that perhaps within a month it had been accomplished?

A. I think that would be a reasonable time, yes, sir.

Q. And now, about the output of the safes that were in stock an
the new safes, as they were constructed, tell us please, briefly in you
own way, what was done in reference to their labeling, stenciling an
marking. How was that done?

A. I don't think that we went to any useless expense to repair
all the safes that were on hand, but they were coming through th
works all the time, and as soon as we took hold, we commenced t
letter them Herring-Hall-Marvin Company. There might have bee
some of them that were in stock and they might have remaine
some months with the name Hall Safe & Lock Company on them
and some of them were changed, and some probably were not.

Q. Can you state approximately how long it was that the finishe
product of the Hall Safe & Lock Company, became disposed of b
the Herring-Hall Marvin Company labeled as the Hall Safe & Loc
Company's safes?

A. The product on hand at that time?

326 Q. Yes.

A. No, I could not. We have probably got some of them
on hand yet.

Q. Well, the great bulk of them I suppose were first sold and new
safes were manufactured, labeled and sold out?

A. Yes, sir.

Q. You were the president and had general supervision of all o
the departments of the concern, I take it?

A. Which concerns?

Q. The Herring-Hall-Marvin Company?

A. The Herring-Hall-Marvin Company, yes, sir.

Q. And did you devote any of your time to the work done at th
other factories of the company?

A. I was back and forth very frequently.

Q. And what was done with reference to the product of the othe
plants of the Herring-Hall-Marvin Company with reference to th
signs on the plants, and the signs, labeling and lettering on th
product, how were they marked?

A. The signs were all changed to the name Herring-Hall-Marvi
Company.

Q. And how about the product?

A. Some of the product had Herring-Hall-Marvin Company
some had Herring on, some Marvin. In Philadelphia most of them
were Herring & Company, I think, or Herring-Hall-Marvin Com-
pany. I think we changed everything.

Q. There were then, as I understand it, taken over by the Herring-Hall-Marvin Company, the five constituent companies or partnerships, as the case may have been, three of which had been manufacturers of safes, Herring & Company, Marvin & Company and the Hall Safe & Lock Company, is that correct?

A. Yes, there was another concern there, Meyers & Smith, who had manufactured Farrell & Company's safes in Philadelphia.

Q. Did these four manufacturing concerns keep up the manufacture of safes after they were taken over by the Herring-Hall-Marvin Company?

A. For quite a while, yes, sir.

Q. Which was the first one to discontinue the manufacture of the product?

A. Marvin & Company.

Q. And then following Meyers & Smith?

A. And then following Meyers & Smith, yes, sir.

Q. But so long as you were connected with it, the Marvin factory and the Hall factory were discontinuing the manufacture of the product and to put it out on the market?

A. Yes, sir.

327 Q. Were the product of the different factories, including the Hall factory, all marked Herring-Hall-Marvin Company, as the goods were produced?

A. Yes, sir.

Q. And that was all that was placed upon them during the term that you were *w*here?

A. Yes, sir, except towards the last portion of it on the Hall Safe & Lock Works.

Q. Returning to Cincinnati, or to the old Hall Safe & Lock Company's plant, when was there any change, if any, made on the signs at the plant and on the product from Herring-Hall-Marvin Company to the Hall Safe & Lock Company?

A. In 1895, some time, I don't remember the time.

Q. At that time, in 1895, as you now recall it, the plant had the sign Herring-Hall-Marvin Company painted over or obliterated and the sign Hall Safe & Lock Works placed instead?

A. Yes, sir.

Q. And that was true also of some of the product of this plant?

A. Yes, sir.

Q. What was the occasion, if you can recall, of that being done, Mr. Hall?

A. It was occasioned by a kind of jealous*l*y that was existing between the Eastern and the Western manufacturers. Mr. Marvin, who as one of the Board of Directors, and Mr. Farrell, and Mr. Wright D. Pounall, living in New York and having the ear of the Wall Street men, who were on the board, Mr. John H. Davis, in connection with the Eastern manufacturers, thought that the business might be improved, if they were to try to identify the different manufacturing concerns. Marvin had a brother who was connected with the cracker business, and he said the talk was at that time that in their consolidation they tried to keep the name of the dif-

ferent factories separate and apart, so that the outside public would not know that they were running under a single management, and he thought the business would be improved. He talked with those people down there and they consulted in the board and they thought it would be a good idea to make a change and see if it would improve the safe business, to give an impression that the different concerns had withdrawn from what was generally conceded was a trust in safes, and that each concern was working under a separate company.

Q. There has been some public criticism with reference to——

A. The default in dividends was the fault of it, and the Wall Street men wanted to bolster it up again.

328 Q. Prior to that time, that is prior to 1895, had there been any advertising or holding out or representation by way of advertising, lettering, letter heads, stenciling of safes, or signs upon buildings, wherein it was asserted in any way that the Herring-Hall-Marvin Company was the successor of the Hall Safe & Lock Company?

A. No, sir.

Q. In any instance?

A. No, sir.

Q. If there had been you would have known it, would you not?

A. Surely.

Q. Since 1892, and up to the present year, 1904, has there been to your knowledge and observation any circularizing or advertising in Cincinnati, in the directories, city or telephone, or upon the offices or plants, any advertisement of the Hall Safe & Lock Company?

A. No, sir.

Q. Or any advertisement of the Herring-Hall-Marvin Company, successors to the Hall Safe & Lock Company?

A. No, sir.

Q. During the time that you were president of the company, was there ever any letter heads issued, in which it was stated on the letter heads that the Herring-Hall-Marvin Company were successors of the Hall Safe & Lock Company?

A. No, sir.

Q. I call your attention to an exhibit known in the record as Complainant's Exhibit 7, on which letter head appears this lettering: "Herring-Hall-Marvin Co.," and in small letters "Successors to Hall's Safe & Lock Co. and operating Hall's Safe & Lock Works, Manufacturers of Standard Safes." What I design to elicit is, was any such letter head ever used by the Herring-Hall-Marvin Company while you were in any wise connected with it?

A. No, sir.

Q. Nor other advertisement of like tenor or effect?

A. No, sir.

Q. You heard the testimony this morning of Mr. Ebel, one of your employés, who was also at one time an employé of the Herring-Hall-Marvin Company and prior to that an employé of the Hall Safe & Lock Company, with reference to the painting of the

Cincinnati plant and the changing of the signs. Do you recall his testimony?

A. I think so.

Q. State whether or no the same was substantially accurate, as you recall it?

A. Yes, sir.

Q. Was it accurate?

A. Yes, sir.

329 Q. Was there ever a concern, corporation or firm in existence, to your knowledge, under the corporate or partnership title of Hall's Safe & Lock Works?

A. No, sir.

Q. What was the Hall Safe & Lock Works?

A. It was a fictitious name used by the Herring-Hall-Marvin Company for the purpose of trying to convince the public that they were running the old business of the Hall Safe & Lock Company, I suppose.

Q. You heard the testimony of Mr. William H. Hall this morning, with reference to the organization of the Hall Safe Company did you?

A. Yes, sir.

Q. Your present company, of which you are president, I believe.

A. Yes, sir.

Q. And his statement with reference to the date of its incorporation, the first output of the product, and the personnel of its Board of Directors is correct, is it?

A. Yes, sir.

Q. How do you mark and how have you marked or stenciled your product since you have been putting out work from your present factory?

A. Hall's Safe Company, and where we make it direct for the dealers who are incorporated in different states, made under their own name, we sometimes stenciled it under their names.

Q. Do you also have upon your safes any token, legend, or design in the way of a trade mark?

A. Yes, sir.

Q. Will you describe what that is?

A. It is a spread eagle, with a safe on its breast and a ribbon in its talons marked "Trade Mark, made in America—United States of America."

Q. Have you ever advertised yourself—I mean by yourself, have you ever advertised the company of which you — president, the successor of the Hall Safe & Lock Company?

A. Never.

Q. I show you, Mr. Hall, a paper which has been marked Complainant's Exhibit C, introduced in evidence during the taking of the testimony of Mr. Donnell, one of the witnesses in this case when he was testifying and identified as being a letter head of the Herring-Hall-Marvin Company under date of December 30, 1902, and I

will ask you if that was the letter head then in use by that company at that time, while you were president?

A. I don't think that is the only one; that is one of them.

Q. That is one of the letter heads of the firm's that you used at that time?

A. Yes, sir.

Q. I show you a bill head that was offered in evidence as
330 Complainant's Exhibit E, introduced during the testimony of Mr. Donnell, dated March 26, 1897, subsequent to the time that you severed your connection with the company. Do you recognize that as one of the bill heads used by your company while you were an officer?

A. Yes, sir.

Q. During the time that you were an officer of that company, did you use any bill heads or letter heads or other stationery, wherein the words Hall's Safe & Lock Company anywhere appeared, either as being succeeded by the Herring-Hall-Marvin Company, or otherwise?

A. No, sir.

Q. Did you ever have any other agreement of employment of any kind with the Herring-Hall-Marvin Company other than the one you have identified?

A. No, sir.

Q. At the time of your incorporation in September, 1896, and following that time up till February, 1897, did you ever have any communication, verbal or otherwise from any officer or employé of the Herring-Hall-Marvin Company with reference to the use of the name Hall Safe Company by you?

A. No, sir. I have a contract that explained to us all that we needed, all the explanation that we needed at the time.

Q. What I am getting at is, did you ever receive any protest or objection from them with reference to the use of the name?

A. There was no occasion for any.

Q. Then the answer is no?

A. Yes, no.

Cross-examination by Mr. ALDRICH:

Q. When, as you understand it, was the original Hall Safe business founded?

A. In 1867, as a company.

Q. That is not the question.

(The question was read.)

A. Do you mean when father originally went into business? In 1849. I was not there at that time, however, that is hearsay.

Q. I will take your word for it. Had any Hall been engaged in the safe business, so far as you know, prior to your father starting business in 1849?

A. None that I ever looked up.

Q. Where did your father conduct his business?

A. At Pittsburg first.
Q. For how long a time?
A. I think about a year.
Q. To what place did he remove?
A. Cincinnati.
331 Q. So that he came to Cincinnati and started the safe business some time about 1850?
A. Yes, sir.
Q. Under what names was the business conducted from 1850 until the formation of the corporation in 1867?
A. Under the name of Hall, Dodd & Company, Hall, Carroll & Company, Joseph L. Hall & Company and the Hall Safe & Lock Company.
Q. How long had the business been conducted as Joseph L. Hall & Company, immediately prior to the formation of the Hall Safe & Lock Company?
A. Probably five or six years.
Q. What kind of safes had been manufactured by Joseph L. Hall & Company, prior to the formation of the corporation?
A. Fireproof safes principally.
Q. Had they been engaged in vault work also?
A. Not at that time.
Q. How soon after the formation of the corporation, or prior did the company engage in vault work?
A. Do you mean from 1850 up to 1867?
Q. No, I understood you to say that Joseph L. Hall & Company did not engage in vault work, did not do vault work?
A. You didn't understand me to say that.
Q. What is your answer to the question?

(The question was read.)

A. What company do you want?
Q. I refer to the formation of the corporation; you have said that Joseph L. Hall & Company did not engage in vault work. If that is an error you may correct it.
A. I don't think—what is the question?

(The question was read.)

Q. We have only talked about the formation of one corporation and that is the Hall Safe & Lock Company.
A. About the time they incorporated was about the first vault work that they had made.
Q. Then, as I understand you, Joseph L. Hall & Company had not, at least extensively, engaged in vault work?
A. Nor any kind of business. Their business was a very small business.
Q. Had the business grown to be a large business by the time that the sale was effected to the Herring-Hall-Marvin Company?
A. It had.
Q. Do you know approximately what the aggregate sales through

all agencies had been in the year preceding the sale to the
332 Herring-Hall-Marvin Company?

A. It was over a million dollars.

Q. Mr. Pullen has stated in his testimony that it was found by the auditors to be in excess of $1,600,000.00 as against $1,200,000.00 of all of the other constituent companies that went into that combination; what have you to say about that testimony?

A. The experts exaggerated those figures somewhat, because they had taken in more than one year in comparison with the others.

Q. Such were their figures, were they not?

A. It seems so.

Q. How was the product known and designated during the period of the existence of the Hall Safe & Lock Company and prior to the sale to the Herring-Hall-Marvin Company?

A. Hall's Safe & Lock Company's safes.

Q. Isn't it a fact that the product was known and advertised as "Hall's safes"?

A. No.

Q. I hand you Cross-Complainant's Exhibit 6 and ask you what it is and when it was published, if at all?

A. It is a price list of the Hall Safe & Lock Company.

Q. At what time was it published?

A. I don't know anything about that. There is no date on it at all.

Q. Are you able, from an examination of its contents, to give any statement as to how long it had been in use prior to the sale to the Herring-Hall-Marvin Company?

A. No, sir.

Q. You do know that it had been in use for a long time prior to that sale, do you not?

A. I dont' know anything about it as far as its use is concerned.

Q. Do you recognize it as a paper that you ever saw while you were connected with the Hall Safe & Lock Company?

A. You mean that form of price list and style?

Q. Yes.

A. No, sir, I do not.

Q. I see that on the face of this price list the words "Hall's safes" appear in large type, the words "Hall's Safe & Lock Company" in smaller type, "Sole Manufacturers of Hall's Safes," and then between the words "Hall's" and "Safes," in large type I find the words, "Standard Fireproof, South American, Sectional and Coin, Fire & Burglar proof and Patent Bankers Burglar proof."

A. Yes, they could have put more on there, if they had wanted to.

Q. There were other kinds, as I infer, of Hall's safes than the ones included in small type between these words?

A. Vaults.

333 Q. And other kinds of safes than these?

A. Yes, and house safes.

Q. I call your attention to a catalog which has been introduced

as Cross-Complainant's Exhibit 5, under date of December 28th, and ask you whether you recognize that as a catalog that was used by the Hall Safe & Lock Company during its existence and prior to the sale?

A. They had catalogs of that kind.

Q. You do recognize it then?

A. I think that is a representation of their catalog.

Q. I call your attention to page 114 of this catalog, and also to pages 115, 116 and 118 and ask you whether or not you have ever seen the matter there printed prior to the present occasion?

A. I think so.

Q. It is matter that was in use and generally circulated by the Hall Safe & Lock Company prior to its sale, was it not?

A. No, this stock is all in the catalog. The agents carried that when they were soliciting for goods.

Q. And used by the agents in connection with the sale of the product?

A. Sometimes, when the customer would let them use it, they would use it.

Q. What do you mean by that answer?

A. I mean sometimes the customer wouldn't take the trouble to look at it at all.

Q. What was it printed for?

A. For convenience.

Q. Convenience in what?

A. Of the agents in soliciting work.

Q. Printed by whom?

A. The Hall Safe & Lock Company.

Q. And circulated with the knowledge and consent of the Hall Safe & Lock Company, of course?

A. I suppose so, by their men. It wasn't circulated to the general public, though.

Q. I find frequent reference in the pages to which I have called your attention to what is known as "Hall's Safes" without any reference to the corporation's name?

A. How could they be otherwise when the man that made them was named Hall?

Q. It could not be, could it?

A. How could it?

Q. Well, you mean by that that it could not be, do you not?

A. I don't see how it could be anything else.

Q. Well, please answer my question. Do you mean by
334 that that the safes were known as Hall's safes, owing to the fact that the man who made them was named Hall, is that what you mean?

A. I was one of the men that made them.

Mr. ALDRICH: Read the question.

(The question was read.)

A. They were not known as Hall's safes any more than the Hall Safe & Lock Company's safes.

Q. Were they known as Hall's safes?

A. They were known as the Hall Safe & Lock Company's safes, made by the Hall Safe & Lock Company.

Q. I have called your attention to the fact that on these printed pages they are spoken of as Hall's safes. I ask you again, were they known as Hall's safes?

A. I am not responsible for some irresponsible parties putting the name in there, Hall's safes, when the name of the concern was Hall's Safe & Lock Company.

Q. I grant that the corporation name was Hall's Safe & Lock Company, but I want to know whether the product was known as Hall's safes?

A. No. Sometimes it was Hall's vaults, or Hall's Safe & Lock Company's vaults.

Q. When applied to safes it was Hall's safes, wasn't it?

A. I tell you, no, Hall's Safe & Lock Company's.

Q. You say, then, the words Hall's safes were not used in connection with the product of the Hall Safe & Lock Company?

A. Not to do business.

Q. Not used in the advertisements?

A. I don't know anything about your advertisements.

Q. I have just called your attention to page 115 of this circular which you say you got.

Mr. MERRICK: That is not a circular.

Mr. ALDRICH: Or catalogue, then.

The WITNESS: That is a letter written by somebody else.

Q. Well I will call your attention to page 115, which is not a letter written by somebody else, what do you say? Do you say that the product of this company was not known as Hall's Safes?

A. The product of Hall's Safe & Lock Company was known as Hall's Safes. Will that do you?

Q. Yes, that will do me.

A. Well, put it down.

Q. I have been working a long time to get you to say that.

A. You didn't do it in the way you wanted it.

Q. Had it come to be generally known and favorably known, prior to the sale to the Herring-Hall-Marvin Company?

335 A. I don't know anything about that—I don't know anything about that.

Q. Would you, from the best of your knowledge and information, say that it was unfavorably known prior to that time?

A. We had hard competition all the time to sell goods.

Q. It was not generally known then, is that what you want to be understood?

A. We had hard competition all the time.

Q. That is not an answer to my question.

A. Put your question then.

(The question was read.)

A. I wouldn't say that they were unfavorably known.

Q. I again repeat the question, had the product of the Hall Safe & Lock Company, known as Hall's Safes, acquired a great reputation and was it favorably known prior to the sale to the Herring-Hall-Marvin Company?

A. How far that extends I can't tell.

Q. Is that the only answer you can give to that question?

A. That is the only answer I can give.

Q. Do you not know as a fact, or is it not your belief, that Hall's Safes were known in that trade and favorably known, in the same sense that the Steinway Piano is and was at that time known in the piano trade, or the Singer machine was known in the sewing machine trade?

A. I don't know anything about those trades at all.

Q. You know something about your own trade?

A. I know about the Hall Safe & Lock Company. That had a big reputation.

Q. And that reputation was based on the character of this product?

A. Naturally, yes.

Q. You negotiated the sale to the Herring-Hall-Marvin Company in behalf of the Hall Safe & Lock Company, or largely did so, did you not?

A. Yes, sir.

Q. I notice in the bill of sale attached to the agreement of May 12th, 1892, that there is a schedule of the physical assets of the company amounting in the aggregate to $821,971.33.

A. Yes, sir.

Q. I see that in this list of assets, the stock of finished safes is appraised at $243,116.40. About how many safes did that item embrace?

A. Probably twelve or fifteen hundred, or a little more maybe.

Q. Averaging about how much apiece?

A. That wasn't entirely safes. There were other things there.

Q. What were the other things?

36 A. Vaults and safes. You can't get an average from that.

Q. What was the total consideration paid for the purchase of this property?

A. Six hundred thousand dollars cash and common stock.

Q. How much?

A. Seven hundred thousand dollars of common stock, which was of very little value.

Q. The business of the Hall Safe & Lock Company was a going business at the time of the sale?

A. Sure.

Q. And was sold as a going business, as I understand.

A. Sure.

Q. It was the intention, as I infer from the agreement of May 2, 1892, to transfer to the purchaser all of the property and assets of every name and nature of the Hall Safe & Lock Company, is that correct?

A. Tools, machinery, leasehold and finished safes on hand, your contract calls for it, with all the conditions of the contract.

Q. Including trade marks and patent rights, trade right, good will. That is true as I understand the contract.

A. The promoters put that in there, yes, sir.

Q. The design being to take over the business as a going business?

A. Yes, sir.

Q. That included the agencies which you had established throughout the different parts of the country, did it not?

A. No, sir. We had nothing to do with the agencies. We had some branch houses with stock in them that belonged to the company.

Q. Whenever you had an agency or any stock on hand it was to be taken over by the new company?

A. It was to belong to the Hall Safe & Lock Company.

Q. What patent rights did you have at that time?

A. We had one patent on a round door safe. The balance had expired. I don't call to mind any other. They wanted to cover everything and they marked in their patent rights.

Q. What trade marks did you have?

A. We had no trade marks.

Q. What trade rights did you have?

A. We had no trade rights, no.

Q. What good will did you have?

A. We had no good will, only what came to us from solicitation.

Q. It didn't amount to anything?

A. Sure, every time you sell a safe you have a lot of competition.

Q. When you transferred this business, did you at the same time make any special agreement with reference to entering
337 the service of the company?

A. We did. That was part of the agreement, all filed at the same time.

Q. And when you changed the names on the factory to the Herring-Hall-Marvin Company, what change did you make, if any, in the stationery used by the company?

A. What is that?

(The question was read.)

A. We changed it to the Herring-Hall-Marvin Company.

Q. On the stationery that had been used by the Hall Safe & Lock Company there was exhibited a bird's eye view of the factory. Did that continue to be used after the Herring-Hall-Marvin Company came into possession of the company?

A. Yes, sir. That wasn't a bird's eye view or a correct showing at all. It was only a picture gotten up to magnify it.

Q. Well, whatever it was, its use was continued after the Herring-Hall-Marvin Company came in?

A. Yes, sir.

Q. How long was it so continued without any change in the names appearing upon the factory?

A. Up to 1895.

Q. I don't intend to mislead you in any way or have you make a mistake upon the record. Do you mean by that answer that the name Hall Safe & Lock Company remained on the factory up to 1895?

A. No, sir, it didn't remain there at all.

Q. Well did it remain on this so-called picture of the factory?

A. That I don't know anything about.

Q. You are unable to state for how long they continued to use the picture with the name Hall Safe & Lock Company thereon?

A. Yes, sir.

Q. How soon did they get out a new catalogue of the product of this combined company?

A. That I don't know. We had photographs taken. I think the same year they commenced to get out one, either sheets or advertisement. I haven't any of them at the present time.

Q. Is it not a fact, Mr. Hall, that they continued to use at the Cincinnati office this catalogue which has been identified as Defendant's Exhibit 5, during all the period that you were connected with the Herring-Hall-Marvin Company?

A. Not exclusively, no.

Q. Did they use this catalogue during all the period?

A. I suppose if they had any that were not worn out, they did in some instances.

Q. I infer from an answer which you made, in the course
338 of conversation on yesterday that they did have a stock of these catalogues on hand and that you still have some of them in your possession.

A. You didn't hear that yesterday at all.

Q. Do you recall me asking you if I had not better file a bill of inquiry to ascertain how you came into possession of such catalogues?

A. You did, but you misunderstood me.

Q. You have no catalogues of this character?

A. I didn't say that. I said that I might furnish you some.

Q. From what source?

A. From wherever they are now. I didn't collect them. They are given out free. Some of the salesmen get them and sometimes leave them with the customers.

Q. I return to the question. Was this catalogue used during the period of your connection with the Herring-Hall-Marvin Company?

A. I think so, some of them, but not entirely, because they got out new photographs, and they had a young man there by the name of Cook, getting out illustrations for catalogues.

Q. Do you say there was a catalogue prepared by the Herring-Hall-Marvin Company prior to 1896?

A. That is my impression, yes sir.

Q. Are you positive upon that subject?

A. I am not.

Q. Mr. Pullen has testified there was no catalogue prepared until some time in 1898 and that this catalogue to which your attention

has been directed was continued until that time. Are you positive that he is in error upon that subject?

A. I am not.

Q. I call your attention to Complainant's Exhibit 7 and ask you when and for how long a period the cut found at the top of this exhibit was used in connection with the business of the Herring-Hall-Marvin Company?

A. I can't tell how long it had been used. There are no dates on it.

Q. You recognize it, do you not, as a cut that was in use prior to the sale to the Herring-Hall-Marvin Company?

A. I recognize the cut used, but when it commenced, I don't know, Mr. Aldrich.

Q. Don't you know it was used by the Hall Safe & Lock Company while it was in existence?

A. Not necessarily.

Q. Do you mean by that answer to say that the Herring-Hall-Marvin Company, after it succeeded to the business, got out that and had put upon the buildings the name of Hall's Safe &
339 Lock Company that appears thereon?

A. You can find that information from the man that made the cut. He has probably got a record of it. I don't know anything about it. His name is on there.

Q. Well, I am trying to get your knowledge or recollection upon the subject. What is it?

A. I told you that I don't remember.

Q. Have you ever seen the cut before?

A. I think so.

Q. During the period when you were connected with the Hall Safe & Lock Company or the Herring-Hall-Marvin Company?

A. That is the part I don't remember.

Q. Is it your judgment that it was used by the Herring-Hall-Marvin Company during its management of the business?

A. They had possession of it. I suppose they used it.

Q. And prior to your leaving the service of the company?

A. That I don't know.

Q. Does the appearance of the words Hall's Safe & Lock Works on this circular enable you to refresh your recollection upon that subject?

A. The cut of the buildings down there is not an exact cut of what the buildings were and that does not refresh my memory any.

Mr. ALDRICH: I will have the question read.

(The question was read.)

A. No, sir.

Q. When were those words first used?

A. Which words?

Q. (The question was again read.)

A. In 1867, when the company was incorporated.

Mr. MERRICK: He is referring you now to the word "Works."

The WITNESS: I didn't know that. If you want to get lots of in-

formation in there probably I can give it to you. The Hall's Safe & Lock Works was used about 1895, to the best of my information.

Q. For what purpose did your corporation, while you were president of the Herring-Hall-Marvin Company, use the circular which has been identified as Complainant's Exhibit 7?

A. I don't know whether we used it at all or not. That is what I was saying.

Q. Have you ever seen one of them before?

A. I think I have seen that on the table two or three times.

Mr. MERRICK: Do you mean during this hearing?

A. Yes.

340 Mr. MERRICK: Or prior to that time?

The WITNESS: With the words Hall's Safe & Lock Works on, I don't think I have.

Mr. ALDRICH: And you desire to be understood as stating upon the record that you don't know whether that cut or picture representing the works, whether accurately or not, was the one used by the Hall Safe & Lock Company prior to the sale or was one designed and put in circulation by the Herring-Hall-Marvin Company?

A. That is a pretty long question. Let us see what it is.

Mr. ALDRICH: We will have the question read.

(The question was read.)

A. I do.

—. When was the new stationery ordered by the Herring-Hall-Marvin Company?

A. I don't know what stationery you mean. Do you mean for the name of the Herring-Hall-Marvin Company? Immediately after we came home from the east, after a settlement of the account.

Q. What was done with the stationery of the Hall Safe & Lock Company which you had on hand?

A. I think the biggest part of it was destroyed.

Q. Have you any recollection upon that subject?

A. I couldn't fix any date on it, no, sir.

Q. When was it destroyed and by whose orders?

A. I think by the orders of the board of directors or myself as president.

Q. Was there any record made of such destruction?

A. Not that I am aware of.

Q. You haven't any very accurate recollection on that subject, have you?

A. We didn't keep records for those purposes at those times. We had a contract and we were carrying that out.

Q. How would you account, then, for letters, as late as 1896 and 1897, upon stationery having representations of the Hall's Safe & Lock Company thereon?

A. It might have been overlooked in the supply room, filed away and run across and used up.

Q. Why, in making the changes of the cut when you were changing stationery, did you leave the cut with the words Hall's Safe & Lock Company appearing on a certain building?

A. I didn't have anything to do with that.

Q. You were constantly using the stationery, were you not,
341 as president of the Herring-Hall-Marvin Company?

A. We had stenographers there; we were dictating; they would copy the letters and sign them. I paid no attention to those things.

Q. You signed letters constantly upon the letter-heads of the Herring-Hall-Marvin Company?

A. I didn't get out a magnifying glass though, to see what was on them, outside of the reading matter the stenographer wrote.

Q. You made no objection to the presence of those words upon the letter-heads of the company, did you?

A. I don't think that I noticed them.

Q. What changes did you make with your dealers in different parts of the country about the use of the words "Hall's Safes" in connection with the product, if any?

A. We didn't do any business with anyone except in our own name, the Herring-Hall-Marvin Company.

Q. I noticed that by the contract with A. L. Dean & Company, in 1886, they were required to keep the name Hall prominently before the public in the territory assigned to them; what change if any was made with respect to that with A. L. Dean & Company, or other dealers similarly situated?

A. I haven't loked over Dean's contract since that time, since it was made with the old Hall's Safe & Lock Company, but when we were running into the Herring-Hall-Marvin Company, they bought goods from us and we paid no attention to their territory.

Q. There was no change made then, as far as you know, was there?

A. There was a change in the account. They had to deal with the Herring-Hall-Marvin Company instead of the Hall Safe & Lock Company.

Q. But you know, Mr. Hall, that my question directs your attention to the change in the use of the words "Hall's Safes" in their territory?

A. We never compelled anyone to use the words "Hall's Safes."

Q. Or to keep the name Hall prominently before the public?

A. Hall's Safe & Lock Company, that was in every contract we had with dealers and everybody else at the time Hall's Safe & Lock Company was in existence.

Q. What change, if any, was made after the Herring-Hall-Marvin Company came into existence and the Hall Safe & Lock Company went out of existence?

A. The Herring-Hall-Marvin Company's contracts were almost
342 duplicates of the Hall Safe & Lock Company's, with the exception of the name Herring-Hall-Marvin Company inserted in place of the Hall Safe & Lock Company's.

Q. I have understood Mr. Pullen to testify that the name Hall's Safe & Lock Company and Hall's Safes were kept up in Chicago and in Louisville and San Francisco and Omaha and other places

hroughout the United States. Do you say that his testimony is inccurate upon that subject?

A. I know nothing about his testimony. I wouldn't impeach Ir. Pullen or try to do it.

Q. Assuming my statement of his testimony to be correct, do you ay that that is inaccurate and that the name was required to be aken down or any change made with reference thereto?

A. My memory is treacherous on that Mr. Aldrich.

Q. What do you mean by that?

A. I mean that I don't know at the present time how to answer hat question.

Q. Have you any recollection upon that subject?

A. We notified all our branches to change their name to the Herring-Hall-Marvin Company. We had no occasion to use the Hall Safe & Lock Company, because they had agreed to go out of busiess.

Q. The only notice that we have in our record here is your notice A. L. Dean & Company that the Herring-Hall-Marvin Company had succeeded to the business of the Hall Safe & Lock Company. I don't recall that there is anything said with reference to the change n the use of the name with reference to the product or advertising he business. Do you say there were any such notices? .

A. I don't think there was.

Q. Changing the subject, I wish you to state when Donnell first consulted with you with reference to the organization of the Hall Safe & Lock Company of Chicago?

A. He never did consult with me.

Q. Did Mr. Dean?

A. No, sir.

Q. When were you first informed that they intended to organize a company known as the Hall Safe & Lock Company to do business n Illinois?

A. After it had been in running order.

Q. Mr. Donnell, then, is in error in stating that he consulted with you and sought your permission to use the name Hall in connection with his corporation?

A. I don't remember his ever saying that he did that.

Q. Well, assuming that he does say so?

A. If he does he is in error.

343 Q. He is likewise, then, in error, if I understand you correctly, in stating that in his judgment it was a proposition of you Hall boys that they should incorporate under that name in Illinois?

A. If he said that is the case, he is in error.

Q. When you first learned that they had incorporated under that name, and as I understand you, after it was done, what did you do about it?

A. Went down to see Mr. McDougal and notified them that they couldn't do business in the name of the Hall Safe & Lock Company. That was too near our name. We were the only corporation by that name in the country.

Q. In what way did you notify them?
A. Notified them by letter.
Q. And signed by your name?
A. By myself, I am pretty certain, as president of the Hall Safe & Lock Company.
Q. Have you a copy of that letter?
A. It must be in our letter book.
Q. I will ask you to produce it, and I will ask Mr. Merrick upon the record to produce the original of the letter.

Mr. MERRICK: If I can produce it I will. I don't know that it is in existence, and I don't think it is, but if it is I will produce it.

Q. What response did you get to that communication?
A. They asked us—I don't know just exactly what they did ask us.

Mr. MERRICK: I would suggest that, if there is such a copy and such a letter in existence, it is very much better to produce that copy than to have him state now what it is.
Mr. ALDRICH: Inasmuch as the letters are not present and I have no assurance that I will ever be able to get the copy, I think I will continue the examination along these lines, and, of course, asking that copies be produced if you can find them.
The WITNESS: I think more than likely we can produce them for you.
Mr. ALDRICH: You may go on with your answer as to what the response was.
The WITNESS: It was Mr. McDougall's reply, if they asked us for the privilege of using the name Hall Safe & Lock Company in selling the goods up there and the use of the name, and he told us as long as they sold our goods exclusively we couldn't object to it, but if they didn't we would have to call them to a halt. That was the substance of it.

344 Q. About what time was this?
A. I think about the latter part of May 1898.
Q. How soon did you make a contract with them by which they were to handle your goods?
A. We have no contract with them now.
Q. Never had one?
A. Never had one, no sir.
Q. At this time A. L. Dean & Company had but recently failed, had they not?
A. I think so, yes, sir.
Q. They were indebted to your company?
A. Yes, sir.
Q. Or to you gentlemen, which was it?
A. The Hall Safe & Lock Company.
Q. In what amount?
A. Somewhere in the neighborhood of ten or twelve thousand dollars, $10,000.00 or a little over I think.
Q. What security had you for such indebtedness?

A. None whatever.

Q. As the result of the sale of the assets of A. L. Dean & Company, how much had been realized upon this indebtedness?

A. That is not a question in my memory now.

Q. Any considerable percentage of the total indebtedness?

A. I think it was reduced to about, down to about four thousand dollars, somewhere in that neighborhood.

Q. When was this reduction made?

A. Within the next year after they failed. It probably took pretty much up to the end of the year.

Q. So that at the time of the organization of the Hall Safe & Lock Company in Illinois the indebtedness was ten or twelve thousand dollars?

A. Not to the Hall Safe & Lock Company.

Mr. MERRICK: The Hall Safe Company, you mean, Mr. Aldrich?

The WITNESS: The Hall Safe & Lock Company have never owed us a dollar.

Mr. ALDRICH: That is not my question. We have been talking about the indebtedness of A. L. Dean & Company.

The WITNESS: I would like to have the name mentioned so I will not get it confused. Hall's Safe & Lock Company haven't owed us anything.

Q. You understand I am referring to the indebtedness of A. L. Dean & Company?

A. Yes, sir.

Q. Did you, or any of your brothers, to your knowledge, become interested as stockholders or otherwise in the Hall Safe & Lock Company of Illinois?

A. Yes, sir.

345 Q. At what time?

A. Probably a year after they—somewhere in that neighborhood—after they organized.

Q. So that at the time of the organization of the Hall Safe & Lock Company of Illinois, there was nobody by the name of Hall, so far as you were advised, connected with that company?

A. No, sir.

Q. And they had no permission from you or your associates, your brothers, to use the name Hall in connection with their business?

A. No, sir.

Q. You afterwards became stockholders in the Hall Safe & Lock Company of Illinois?

A. They issued some preferred stock to us.

Q. To cancel or secure which——

A. To cancel their old indebtedness, and asked us to carry it in that way, they paying interest on it until the amount was extinguished by payments.

Q. Did you understand that this extinguishment, or partial extinguishment took place through sale of the assets of A. L. Dean & Company, or through the earnings of the Hall Safe & Lock Company of Illinois?

A. Through the earnings of the Hall Safe & Lock Company of Illinois, I think.

Q. You didn't realize much of anything through the sale of the assets of A. L. Dean & Company, did you?

A. I think they reduced their indebtedness, both Dean and Donnell, down to about four thousand dollars at different times. That is about the amount, about six thousand dollars.

Q. How much preferred stock did you acquire in the Hall Safe & Lock Company of Illinois?

A. I think it was about four thousand dollars.

Q. How much do you retain at the present time?

A. I don't retain any. The company owns two thousand dollars I think.

Q. I think we have been advised upon the record that the stock is in your name and that of your brother for the benefit of the company. Is that correct?

A. It was that way, but the stock that was in my name was taken up.

Q. In whose name does it now stand?

A. In the name of W. H. Hall.

Q. And that is held for the benefit of the Hall Safe Company of Cincinnati?

A. Yes, sir.

Q. Do you recall the fact that you met James W. Donnell in New York, during the time that you were negotiating the sale of the Hall Safe & Lock Company's properties to the Herring-Hall-Marvin Company?

A. I never met James Donnell in New York, to my knowledge, at any time.

346 Q. Mr. Donnell said Edward Hall "told me that in New York, and he hung them back on that a month until they came after him and gave him the sale that they wanted. He sold to them on his own terms, and as I understood from him, he made negotiations for the heirs of the estate." Does that enable you to recall the conversation with Mr. Donnell?

A. No, sir.

Mr. MERRICK: Perhaps if you will read the whole of it it may.

Mr. ALDRICH: I was questioning Mr. Donnell with reference to his permission to use the name Hall Safe & Lock Company for the Illinois corporation, and I asked him this question: "Q. Well, that was a question that you also investigated, as I understood, before you organized the corporation." He answers: "Yes, sir. The Hall boys had told me before we organized the corporation that they had not sold out their name; that they had the right to use it; in fact, they said they would not sell out so that they couldn't go into business if the Herring-Hall-Marvin Company wasn't a success. Edward Hall told me that in New York, and he hung them back on that a month until they came after him and gave him the sale that he wanted. He sold to them on his own terms, and as I understood from him he made negotiations for the heirs of the estate." Do you recall it now?

A. I never had that conversation with Mr. Donnell that I am aware of.

Q. (Reading from the testimony of Mr. Donnell, p. 143:)

"Q. Mr. Pullen was there also at the time. "A. Yes, Mr. Pullen was in New York at the time. Mr. Pullen was not there when I met Mr. Hall in New York, but I think—I don't know whether he was there when negotiations were closed or not—I think I understood from Mr. Pullen that he was not there."

The WITNESS (addressing Mr. Pullen): You don't remember Jim ever being in New York with me, do you?

Mr. PULLEN: No, I never saw Mr. Donnell in New York. I never met him with you and I don't remember you seeing him.

The WITNESS: I don't remember meeting him in New York. I can't recall now any circumstance.

Q. Do you recall any time when Mr. Donnell discussed the use of this name, the Hall Safe & Lock Company, for his proposed corporation, and when you called in your attorney, Mr. McDougal, for the purpose of discussing whether he could use the name?

A. With Mr. Donnell?

347 Q. With Mr. Donnell.

A. No, sir.

Q. Did any such conversation ever take place?

A. Not that I know of, not with Mr. McDougal.

Q. Or Mr. Cochran?

A. Mr. Cochran is there. I can borrow the information.

Q. No, I want your recollection.

A. I don't remember of it. I haven't had any conversations with Mr. Donnell the last few years, since the Hall Safe & Lock Company was organized, and I told him I guessed we were able to take care of ourselves, as far as contracts were concerned.

Q. During my cross examination of Mr. Donnell I asked him this question and he gave me this answer:"

"Q. Did you select the name of the Hall's Safe & Lock Company at the request or suggestion or instigation of the Hall Brothers or Hall boys at Cincinnati, or did you obtain their consent merely as a matter of courtesy? "A. The talk with the Hall boys gave us their consent to organize the company. I don't remember whether it was their proposition or not that we do so, but if my memory serves me right it was."

What do you say to that answer?

A. I say I don't think that is the case. I don't remember of any such conversation. I never knew they were going to organize until they had.

Q. Mr. Donnell further testifies:

"—. You had a talk with the Hall boys, you say, about it? A. Yes, sir, and their attorney. Q. Well, what did you say to them? A. I asked the Hall boys if they had any objections to our using the name. I told them we had got a great many inquiries from advertisements in the papers connected with the Hall people for a number of years and by mail; they kept coming in all the time, and I thought if we would organize the Hall Safe & Lock Company,

why, I could get my mail without any trouble, as the mail and post-office was stopped one day—at least, it wasn't stopped, but we were questioned as to whether it belonged to us or not, and he said he had no objection, but we had better see his attorney, and see whether we could organize or not; so we saw his attorney, and he told me they had surrendered their charter and gone into liquidation, and we were at perfect liberty to organize under the name of Hall Safe & Lock Company."

Having read you Mr. Donnell's statement upon that subject, are you now able to recall the conversation?

A. No, sir.

348 Q. Mr. Donnell, at a later period in this examination, says that an attorney who was called into consultation at that time, was Mr. James McDougall. Did you employ such an attorney at that time?

A. No, sir, I did not, about that time. I don't remember how long Mr. McDougall has been dead, but I think it was about 1898 that he was our attorney.

Q. Then if I understand you, Mr. Hall, your testimony is that you had no conversation with Mr. Donnell, or Mr. Deane, or anyone representing them, about the use of the name prior to the organization of that corporation in Illinois?

A. No, sir.

Q. And you never referred him to your attorney upon that subject?

A. Not prior to the organization of the Hall Safe & Lock Company.

Q. I understand that you quit the service of the Herring-Hall-Marvin Company in August, 1896, or thereabouts?

A. August 1st.

Q. And that you took steps to organize the present Hall Safe Company in September of that same year?

A. September, yes, sir.

Q. Did you build or rent property to engage in the manufacture of safes?

A. We leased property.

Q. At what time did you make that lease?

A. In October, November or December. I think it was either October or November, 1896. The rent didn't commence until January. We had our office there in December.

Q. And you commenced the manufacture of safes at about what time?

A. We commenced the preparation of them right away for the manufacture of safes. I don't think we turned out anything until May.

Q. I think the record shows suit was brought against you in the United States Circuit Court for the Southern District of Ohio in February of that year?

A. I don't remember the date. You would know that better than I would.

Q. So that before you commenced the manufacture of safes, you were warned by the suit to which reference has been made?

A. If that is what you call a warning, I was, sure.

Q. What public notice or advertisement had you made of your intention to engage in business prior to the commencement of this suit?

A. Our corporation was advertised in September.

Q. In what way?

349. A. In the daily papers. We got our circulars that we were going back into the business, and were making some contracts.

Q. When did you make——

A. In December we were there, the whole month of December. Our rent didn't commence until January.

Q. And very soon after your rent commenced, you had the warning to which reference has been made?

A. I don't know whether you would call it a warning or not; there was a suit brought; I will say that.

Q. Why did you adopt the name Hall Safe Company?

A. To get the benefit of our education as safe manufacturers.

Q. You recognized, both in your mind and by your action, that the word "Hall" in connection with this trade or industry, had acquired a great value?

A. The word "Hall" did not. Our own names and reputation were good throughout the community. We knew that as well as anybody. We had never been in any other business at all. We were well known, too.

Q. You could have gone into business by any other name, as well, could you not?

A. What would be our object?

Q. I am asking for the fact?

A. There was no taint on our name; we kept that. We didn't want to do business in anybody else's name.

Mr. ALDRICH: I will have the question read. Answer the question.

(The question was read.)

A. I don't think so.

Q. Why not?

A. I don't think my brothers and sisters would have been willing to go in with me at the time if we were going to take another name, because we had a reputation of building safes well known all over the country.

Q. You could have announced to the trade, if you were going to do business under the name "United States Safe Company" or "Continental Safe Company," or any other arbitrary name, that you were the gentlemen who owned that company and were engaged in the safe business?

A. We advertised our own name; that we knew all about the business, and they knew we knew all about the business, and they com-

menced to buy goods from us as soon as we commenced to make them.

Q. I know you did that, but why did you do it?

A. I am telling you why, to make some money out of it.

350 Q. And because you knew that the word "Hall" in connection with this industry had a great reputation?

A. I knew that myself and my brothers had a great reputation. No other Hall had any reputation. There was no other Hall in the business at that time in the manufacture of safes.

Q. Your father and his sons, including yourself, as I understand it, were the only Halls who had been in the safe business; that is true, is it not?

A. I think so, except an uncle of mine once went into the business.

Q. That was a short time, quite an unimportant matter, was it not?

A. I didn't investigate it. I don't know how long he was at it.

Q. At what period of time was your uncle engaged in the business?

A. I really can't recollect at the present time. I think somewhere in the eighties.

Q. At what place?

A. Louisville, Kentucky.

Q. He didn't remain in the business a great while, did he?

A. He didn't live very long.

Q. What became of his business?

A. That I don't know. I was not interested at all.

Q. It was not continued?

A. No, sir.

Q. So that if the word "Hall" in this industry had any value, and had given to this kind of product, any value or reputation, it had been conferred by the labors of your father, yourself, and your brothers during this period of somewhere over fifty years that the family had been engaged in that business?

A. No, we had not been at it that long.

Q. I understood your father was well launched in business as early as 1850?

A. Before that time? It is according to what you call well launched. If it is to rob Peter to pay Paul, and hard knocks from one day to another, and all that sort of thing, to build up a thing, why, I will admit it.

Q. I am right in saying that your father and yourself—your family had been in the safe business more than fifty years, whether on a large scale or otherwise?

A. Up to what time?

Q. In 1896?

A. No, sir, they had not.

Q. How many years then?

A. Since 1849.

Q. Mr. Merrick is in error, then, in his bill, in stating that Joseph L. Hall started the safe business in 1847?

A. I think he is.

Q. Without being so particular about the exact number of
351 years, there had been then a long period of time in which the Hall family had been engaged in the safe business?

A. Yes, sir.

Q. And they had acquired a great reputation and considerable wealth in that business; that is a fact, is it not?

A. I don't know what you call considerable wealth. That is the part that bothers me.

Q. Let us say a competence, then?

A. Well, we are comfortably fixed.

Q. The reputation had been unstained and untarnished during this entire period?

A. Yes, sir.

Q. The name of the family in connection with this trade?

A. Yes, sir.

Q. Your father and yourself and your brothers had maintained a commercial reputation?

A. Yes, sir.

Q. Of the first quality and standing, was it not?

A. Yes, sir.

Q. There was nothing in connection with your commercial and business standing, or the character of your work which you had done as manufacturers that need to make you ashamed in any way?

A. No, sir.

Q. On the contrary, you had every reason to be satisfied and proud of the reputation which you had made as manufacturers of safes during this period?

A. Yes, sir.

Q. And likewise of the product which you had turned out? That was true also, was it not?

A. That was true.

Q. And so, when you adopted the name of the Hall Safe Company, you desired to have for yourself, and your brothers and families, the benefits to be derived from this long and honorable commercial and business career, did you not?

A. The reputation of ourselves was not to be thrown away.

Q. And of your product?

A. And of our product.

Q. And you adopted the name, of course, with the intention of reaping such commercial advantages therefrom as you might be able to do?

A. That is right, sir.

Q. And when were you advised, and by whom, if anyone, that you were not at liberty to go into the safe business, or to use the name Hall in connection with such business, while you were connected with the Herring-Hall-Marvin Company, but that upon the cessation of such relations with that company you could reembark in the safe business, and at the same time appropriate the name of Hall in connection with such business?

A. We didn't have to be advised. We had a contract that governed all those things.

352 Q. Do you say that you had no advice upon that subject?

A. I don't say so, no, sir. Mr. Cochran was our adviser at that time.

Q. I will ask the stenographer to read the question.

(The question was read.)

Q. I understand, then, from these answers, that Mr. Cochran so advised you. Is that correct?

A. That is what I said, yes, sir.

Q. When did he so advise you?

A. Previous to the time that we made our contract with the Herring-Hall-Marvin Company. That was the nature of the company.

Q. Was Mr. Cochran your adviser in 1892?

A. Yes, sir.

Q. What, if anything, have you, or have your company, or any persons connected with your company, if you know, to do with the Chicago litigation?

A. Nothing whatever.

Q. Were you consulted with reference to the employment of Mr. A. F. Hatch?

A. I was not consulted, no, sir.

Q. When did you first hear of such employment in that litigation?

A. I don't know when it was; about a month ago.

Q. I want to go back to a subject—I didn't find what I was looking for when I was looking at my notes. Referring again to this conversation testified to by Mr. Donnell with you in New York, I will call your attention to this testimony, at page 139 and 140 of the record in the Chicago case. Mr. Donnell is asked the following question:

"Q. Who told you that the Hall boys were released from any and all obligations not to go into the Safe business? A. They did themselves, showed me the release.

"Q. When was it they told you that? A. Why, shortly after they went out. They said they had no agreement with them now and they were at perfect liberty to go into business for themselves. I asked them about it.

"Q. That was before they actually did go into business? A. When they were buying their machinery I asked them if they could use the name 'Hall.'

"Q. That subject seems to have been quite frequently discussed between you and them? A. Yes, sir; I was very much interested that the name should continue. I blamed the boys for selling out the name. I didn't think they did right."

353 Do you recollect such conversation with Mr. Donnell?

A. As I said before, I don't believe I ever was in New York with Mr. Donnell to my recollection.

Q. Do you recollect this conversation or talk during the time

you were purchasing your machinery, whether in New York, Cincinnati, or any other place?

A. No, sir.

Q. Do you say that it did not take place?

A. No, sir, not that I know of.

Q. I call your attention to this record on that subject. (Reading from record as follows:)

"Q. When did you first learn that they had sold out the name? A. I learned that they were going to sell it out before arrangements were completed with the Herring-Hall-Marvin Company. Mr. Hall and I were in New York at the time.

"Q. And you learned afterwards that they had done so. A. Yes, sir.

"Q. And they were told again, as I understand you, that they had been released? A. Yes, sir."

De you recall that conversation?

A. I have no recollection of ever meeting Mr. Donnell in New York.

Q. Well, without reference to the location of the conversation, are you able to inform us——

A. Oh, I might have talked with Jim here within the last year or two, and showed him our contracts, or something of that sort. That is the only thing I can refer to in any shape or form.

Q. He states here, as I have read——

A. I think he is in error.

Q. —that he had that conversation with you before you sold out the name to the Herring-Hall-Marvin Company, and again after you had sold it out.

A. I think he is mistaken in regard to that, as far as my recollection goes, he is mistaken. I am absolutely certain of it.

Redirect examination by Mr. MERRICK:

Q. Mr. Hall, you have been interrogated at considerable length about the use by you of the name of "Hall" in the organization of the Hall Safe Company. May I ask you whether or not it is not the fact that you adopted the name of Hall as a corporate name, or the Hall Safe Company, or used the name "Hall" in that Company, because you at that time honestly believed that you had a perfect right to do so from your contract of release, because it was
354 your own name, and because of your personal reputation and long life as a builder and seller of safes? in which business you have been associated with other members of your family; isn't that true?

A. That is true.

Q. Is it not also further true that you had no design to deprive unjustly, or otherwise, anybody else, a corporation or otherwise, of the use of the name "Hall"?

A. That is true, also.

Q. The advice that you received with reference to the name "Hall" in any corporation, had ante-dated the incorporation of your company by at least four years, I understand you to say, when, in

1892, you sold out the plant of the Hall Safe & Lock Company to the combination, and you were so advised by counsel?

A. Yes, sir, and the contract was drawn for that purpose at that time.

Q. But you were not advised by counsel, and as I understand your testimony, you did not deem that you required any advice at the time that you used your own family name in the corporation now known and now doing business as the Hall Safe Company of Cincinnati, Ohio; that is correct, isn't it?

A. Yes, sir.

Recross examination by Mr. ALDRICH:

Q. To what contract do you refer when you say the contract drawn in 1892 specified that you should use your name?

A. When we furnished a bill of sale to the Herring-Hall-Marvin Company we also furnished the contracts which were part of the sale.

Mr. MERRICK: You mean personal contracts of employment?

The WITNESS: They were just as much a part of the sale as the bill of sale itself.

Mr. ALDRICH: That is the only contract that you refer to?

The WITNESS: Yes, sir.

Mr. MERRICK: Mr. Maxwell wanted to know if Mr. Aldrich had called upon me to produce certain letters from Mr. Deane with reference to certain matters.

Mr. MAXWELL: I wanted to know whether Mr. Aldrich called upon you for the originals, and upon the witness, Mr. Hall, for the originals of correspondence between the Hall Safe Company of Cincinnati, and the Hall Safe & Lock Company, of Illinois, or
355 Donnell or Deane with respect to the use of the name Hall Safe & Lock Company.

Mr. MERRICK: He did, and I told Mr. Aldrich I did not think such original letter was in existence. If it is I will produce it.

Mr. ALDRICH: I would like to have you produce the original if you can.

The WITNESS: I will do so, if I can. I don't think you will find more than one of our books—the notice.

Testimony taken in behalf of cross-complainant at the offices of Aldrich and McAuley, in the City of Chicago, Illinois, on the 5th day of January, 1905, beginning at the hour of 10 o'clock A. M.

Testimony of George T. Trumbull.

GEORGE T. TRUMBULL, produced as a witness on behalf of cross-complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. ALDRICH:

Q. What is your name?

A. George T. Trumbull.

Q. Where do you reside?

A. 984 West Polk Street, Chicago.
Q. How long have you resided in Chicago?
A. Very nearly twenty-one years.
Q. In what business have you been engaged?
A. Safe business.
Q. How long have you been in that business?
A. About twenty-three years.
Q. Where did you start, and with whom?
A. At Cincinnati, with the Hall Safe & Lock Company.
Q. When you came from Cincinnati to Chicago with whom were you associated?
A. The Hall Safe & Lock Company.
Q. And for how long a time?
A. From August 12, 1884, until February 12, 1886.
Q. And after February 12, 1886, with whom were you associated?
A. Until February 12, 1898, with A. L. Deane & Company.
Q. In what capacity?
A. Book-keeper, Cashier and Salesman; general utility.
Q. By reason of this long service, you may state, whether you are acquainted with the reputation of the product of the
356 Hall Safe & Lock Company for the last twenty or more years?
A. I am.
Q. What was the reputation of such product?
A. Second to none.
Q. And by what name was it known?
A. Hall Safe & Lock Company.
Q. That was the name of the corporation?
A. Yes, sir.
Q. But had the product any name?
A. Oh! Known as Hall's Safes & Hall's Standard Safes.
Q. Had the name become generally and well known throughout the country?
A. Very well known.
Q. So that its use in connection with this trade was of value or otherwise?
A. It was of decided value.
Q. Do you know at what time the Hall Safe & Lock Company was sold or transferred to the Herring-Hall-Marvin Company? I do not mean the exact date; I mean approximately.
A. Yes; about 1892.
Q. And are you able to state about what time the Herring-Hall-Marvin Company went into the hands of the receivers, Gray and Pounall?
A. My judgment is about 1893 or 1894.
Q. And at what time, if at all, did A. L. Deane & Company go into the hands of receivers?
A. February 12, 1898. Pardon me just a moment. There is one correction I would like to make; that is in the matter of the date of the formation of the firm of A. L. Deane & Company. Instead of being February 12, 1886, it was February 1, 1886.

Q. You may state whether or not you had any conversation with any member of the firm of A. L. Deane & Company, either prior or subsequent to the appointment of a receiver for that firm, with reference to the organization of another Safe Company in Chicago, or in Illinois?

A. I did.

Q. With which member of the firm?

A. Both members.

Q. At what time were such conversations had?

A. Between February 12th and March 1, 1898.

Q. You may state what conversation you had with Mr. A. L. Deane?

A. Mr. A. L. Deane stated to me that a new company was going to be formed. The company would consist of Mr. A. L. Deane, Mr. J. W. Donnell, and myself, in consideration of Mr. A. L. Deane's furnishing $1,500, a draft for which he exhibited to me, the draft having been made payable to him by John G. McWilliams, and Mr. Donnell's supplying $1,500, and my supplying $1,000; the
357 company would be formed of the three of us, and as far as our interests in that company were concerned, our interests would be identical, and by reason of the fact that the Herring-Hall-Marvin Company were tied up, and the belief was that the Herring-Hall-Marvin Company would cease to exist, then would be an opportune time to conduct the business under the name of the Hall Safe & Lock Company, and that great value would come through the use of that name; and I most certainly agreed that great value would come through the use of the name of Hall Safe & Lock Company. I refused to be a party to this agreement for more than one reason.

Q. Well, you are only at liberty to state such reasons as you gave them; such reasons as you told them at the time.

A. As I understood, this question you put was as to what conversation I had with Mr. Deane?

Q. Yes.

A. That was practically all I had to say to Mr. Deane.

Q. Did this conversation occur more than once?

A. Oh, yes, sir. I was solicited quite strenuously to get $1,000 and put it in and be a member, be a part of this institution.

Q. And at what time did you have that conversation with Mr. Donnell on the same subject?

A. About approximately the same time. In connection with the conversation I had with Mr. Donnell by reason of an interest that I had in the keeping in a position of a Mr. W. A. Hoffman, who is a brother-in-law of mine, and who I induced to leave a position in Cincinnati, and come to Chicago and engage in the employ of A. L. Deane & Company, and who, to a certain extent,—I felt there was a matter of a little bit of responsibility devolving upon me in the matter of keeping him employed by reason of my having asked him to cease his connection with Proctor & Gamble in Cincinnati. In my talk with Mr. Donnell I went on to state—now, as this thing was laid out, of course the spirit of economy was brought up at that

time; the business was to be conducted on this basis; Mr. Deane was to look after the inside work; I was to look after the work in and about Chicago, as it was well known I had always had a prejudice against going away from home, and outside work and work in Chicago, was to be looked after by Mr. Donnell. When that situation was made known to me, I said to Mr. Donnell: "What provision is going to be made for Mr. Hoffman?" "Well,
358 we can get along without him; we won't have any use for him." Well, with me that was the turning point. I then stated that that being the case of course I would get through; I was through; and I wouldn't entertain the proposition any further. Then the statement was made by Mr. Donnell to me: "Well, now here, let's you and I and Bill"—meaning Hoffman—"get together. We can get along without Deane; he don't amount to anything, anyway. He don't know enough to go and answer the telephone. We can make a combination and go ahead." I objected and ceased my connection with the institution then.

Q. What, if anything, was ever said by Mr. Donnell about the use of this name, Hall Safe & Lock Company?

A. If anything Mr. Donnell was very much more profuse in his ideas as to the great value that would accrue through the use of "Hall Safe & Lock Company."

Q. You may state, Mr. Trumbull, whether or not, during the period that A. L. Deane & Company had charge of this territory and were dealers in Hall Safes, they took pains, by their signs, stationery, bill heads, receipts, or otherwise, to keep the name of Hall's Safes, and the fact that they were dealers in Hall Safes prominently before the public?

Mr. MERRICK: I object to the question as extremely leading.

Mr. ALDRICH: I am going to follow it up by asking what they did. I will have the question read.

(The question was read.)

A. Yes, sir.

Q. You may state what they did to that end.

A. Why, the show windows were covered with lettering that indicated more strongly than anything else that they were dealers in Hall Safes; a show safe of very attractive design was placed in a conspicuous position in front of the building.

Q. How labeled?

A. "Hall Safes;"—a very strong sign that had years before been used for the old Hall's Safe & Lock Company's store on Dearborn street, was placed across the entire front of their building at 52 and 54 Wabash avenue; the stationery and cards, bill heads, in fact, any and everything that could consistently bear the title "Hall" was used in connection with the conduct of their business.

Q. Have you a check given by you which was unpaid by reason of the embarrassment of the firm of A. L. Deane & Company?

A. I have.

359 Q. Have you it with you?

A. No, sir, I have not.

Q. I wish you would produce that check or cause it to be produced?

A. All right, sir, I will.

Q. You may state when this check was given you?

A. Very shortly; by that I mean within two or three days after the first of February, 1898. I might say it wasn't deposited until,—Oh, perhaps the 15th of February, and by that time there were no funds.

Q. What business are you now engaged in, Mr. Trumbull?

A. In the Safe and Vault business, at 117, 119 Lake Street, Chicago.

Q. In that connection you may state if you are brought in frequent contact with proposed buyers of safes and vault material?

A. I am.

Q. State, if you know, what effect of this conduct of the business under the name of the Hall Safe & Lock Company at 52 and 54 Wabash avenue, has upon the public and prospective buyers of safes and vault materials?

Mr. MERRICK: I object to that, as calling for a conclusion of the witness.

Mr. ALDRICH: You may answer now.

A. The impression has been brought that the safes exhibited for sale at 52 and 54 Wabash avenue are the product of the old Hall Safe & Lock Company, or their successors, the Herring-Hall-Marvin Company.

Q. How do you know that such is the impression?

A. Oh, from a number of experiences I have had; remarks of parties that call on us in the matter of the purchase of a safe. We found it necessary to time and again call their attention to the fact that the safes exhibited at 52 and 54 Wabash avenue are not made by the original company, or by the original company's successors.

Mr. ALDRICH: With the understanding that that check is going to be produced, and made a part of this witness' testimony, that will conclude my direct examination.

Cross-examination by Mr. MERRICK:

Q. When did you come to Chicago, Mr. Trumbull, from Cincinnati?

A. August 12, 1884.

Q. How do you recall the date so accurately?

A. It was quite an important event, my moving myself and family from Cincinnati to Chicago.

360 Q. Have you refreshed your mind recently as to the date?

A. No, sir, it has been a point in my career, the matter of me coming to Chicago.

Q. You haven't looked up any date?

A. No, sir.

Q. You have no other dates here, dates of events?
A. Yes, sir.
Q. How do you recall those dates so accurately?
A. I sometimes figure that I am blessed with the faculty of good memory.
Q. Matters of details and such things are a peculiar feature of your memory?
A. That is one thing, and the matter of the remembrance of faces, names and so forth, I have made it some little study.
Q. You haven't in any way gone over any records recently to refresh your recollection of these various dates you speak of?
A. No, sir.
Q. But your memeory as to dates is very accurate, as a rule, from your direct examination?
A. Yes, sir.
Q. And the dates you have given of your coming here and the time you entered the service of A. L. Deane & Company, and the date of your leaving, are all accurate?
A. Just as if they happened yesterday.
Q. Without any refreshing of your recollection by examination of the records at all?
A. None at all, no, sir. All are susceptible of proof, too.
Q. Well, I am not making any point about the susceptibility of proof. I am just asking you about the matter of your recollection.
A. Yes.
Q. You were employed by the Hall Safe & Lock Company at Cincinnati just before you came up here?
A. I was two years.
Q. At whose instigation did you come to Chicago?
A. Joseph L. Hall, president of the company.
Q. He sent you up here, did he?
A. Yes, sir, he did.
Q. Did Mr. Donnell request you to come in any way?
A. Yes, sir.
Q. Was it agreeable to Mr. Donnell that you should come?
A. He never evinced any disagreeable ideas by reason of my having been sent here.
Q. It wasn't at his request or instigation that you came?
A. No, sir, not at all.
Q. When you came here, as I understand you, in 1884, who was in charge of the Hall Safe & Lock Company's business?
A. James W. Donnell?
361 Q. Anybody else?
A. No.
Q. Was Mr. C. O. Hall here at that time?
A. No, sir.
Q. When did he come?
A. He didn't come after August 12, 1884.
Q. Had he been here before that time?
A. Yes, sir, he had.

Q. He was then back in Cincinnati?
A. Back in Cincinnati.
Q. How was the business being operated at the time you first came here, as an agency, or branch office?
A. Branch office.
Q. Mr. Donnell was in charge?
A. He was in charge.
Q. What did you do when you came here?
A. I was bookkeeper and had charge of the cash, except the signing of checks.
Q. How old were you when you came up here?
A. Twenty-six years old.
Q. So that you are now how old?
A. I will be forty-seven if I live until the 7th of next April.
Q. When did Mr. Deane come to Chicago?
A. February 1, 1886.
Q. Had you known him -efore that?
A. No, sir, never saw him. Won't you permit me to qualify that answer a little?
Q. Certainly qualify it any way you want to.
A. I had seen Mr. Deane the summer previous to 1886 and during the month of January, 1886, I saw Mr. Deane, I should say for about two weeks, the last two weeks in January, 1886, during which time he was negotiating for the purchase of the stock of the Hall Safe & Lock Company in Chicago. Those were the only two occasions on which I had seen Mr. Deane previous to February 1, 1886.
Q. Do you recall definitely and accurately in detail, the facts concerning Mr. Deane's coming to Chicago and organizing the company of A. L. Deane & Company?
A. I know that he came to Chicago and that he formed a partnership with Mr. Donnell and I know that jointly they entered into a contract with the Hall Safe & Lock Company to handle their goods in Chicago.
Q. Don't you know as a matter of fact that instead of their entering into a contract to handle their goods that they purchased the business of the Hall Safe & Lock Company here in Chicago?
A. They purchased the stock of the Hall Safe & Lock Company of Chicago, yes.
Q. They purchased the office fixtures?
A. Oh, yes.
362 Q. Everything of that kind, lock, stock and barrel, didn't they?
A. They purchased the——
Q. Horses, wagons, stock, signs, fixtures, everything they had, isn't that the fact?
A. Everything of a tangible nature they did, yes.
Q. Well, they didn't buy anything that wasn't tangible I suppose, but they bought everything that was here in the store on Washington Street?
A. Yes, sir.
Q. And they did that by written contract?

A. They did that by written contract.
Q. And they became then not agents but dealers in the Hall Safe & Lock Company's goods?
A. So they advertised themselves.
Q. And upon their removal from Washington Street to Dearborn Street, and from thence to Wabash Avenue, they carried with them the same paraphernalia that they had before, didn't they?
A. All the Hall Safe & Lock Company's signs and so forth.
Q. During that time you were the bookkeeper chiefly of the firm?
A. Yes, sir.
Q. That was your main business?
A. That was my main business.
Q. You acted as the office man, bookkeeper and cashier and had charge of the petty cash?
A. Jointly with Mr. Deane.
Q. Mr. Deane was also an office man?
A. Yes, sir, he was an office man.
Q. You did little or no work outside, in the matter of soliciting sales or orders, did you?
A. I used to think I did.
Q. I mean by that, Mr. Trumbull, that wasn't the main part of your business; your business was mainly in the office?
A. I was inside, yes, sir.
Q. Mr. Donnell's business was as outside man, socalled, in the immediate neighborhood of Chicago, wasn't it?
A. Yes, sir.
Q. He didn't travel on the road selling goods?
A. No, but in response to calls he would go.
Q. There were other men employed to solicit business in the country and territory outside of the City of Chicago?
A. Yes, sir.
Q. Mr. Donnell was in active charge of the business in Chicago?
A. Yes, sir.
Q. You remained with them practically in that capacity,
363 practically, without change until they failed?
A. Until they failed, yes, sir.
Q. And when they failed you were placed in charge of the stock under the Receiver, were you?
A. I was placed in charge of the stock under the Receiver.
Q. And you acted under the Receiver to dispose of some of the goods?
A. No, sir.
Q. What became of the goods?
A. They were sold by a representative of the Metropolitan Bank.
Q. That is by the Receiver?
A. By the Receiver, yes.
Q. They were not parceled out from time to time?
A. No, sir.
Q. Sold in a lump?
A. Sold in a lump.
Q. How long were you in charge under the Receiver?

A. From the 12th of February until the 1st of March.
Q. At which time the sale was made?
A. The sale was made a few days before that, I believe.
Q. During that time did you sell any other product of any other safe concern?
A. No, sir, I did not.
Q. During the time that you had been with the firm of A. L. Deane & Company, were you on friendly or unfriendly terms with Mr. Donnell?
A. During the time I was with A. L. Deane & Company?
Q. Yes.
A. I flattered myself that I was a close friend of Mr. Donnell's.
Q. Had there not been some feeling or animosity existing between you and Mr. Donnell prior to your leaving their service?
A. No, sir, if I had known of it I would have quit at the drop of a hat. I never saw any inclination or inkling of anything but the kindliest of feeling from Mr. Donnell until the day I left.
Q. Mr. Hoffman is your brother-in-law?
A. He is a brother-in-law of mine, yes, sir.
Q. When did he come to Chicago?
A. He came to Chicago in September, 1891.
Q. And went into the employ of A. L. Deane & Company at once?
A. At once, yes, sir.
Q. In what capacity?
A. As assistant bookkeeper.
Q. Did he also sell safes?
A. Yes, sir.
Q. He worked under your superintendence practically, did he?
A. Yes, sir.
Q. But under the general control of the firm?
A. Under the general control of the firm, yes, sir.
Q. When did the difficulty, if there ever has been any difficulty or animosity between you and Mr. Donnell arise?
364 A. It seems it had its inception when I told him I was going into the safe business on my own account.
Q. When was that?
A. Either the last or the second to the last day in February, 1898.
Q. Just immediately prior to your leaving?
A. Just immediately prior to my leaving.
Q. Did that information that you imparted to him about going into the safe business on your own account form a part of the transactions that you have testified to here, about the proposition made to you to go into the Hall Safe & Lock Company?
A. I don't know that I got that.
Mr. MERRICK: I will have the question read.
(The question was read.)
A. No, sir, it did not.
Q. When was this proposition made to you? When was it made By Deane and Donnell definitely, now, let us get right down to dates; you are familiar with it.

A. Yes, on or about the 15th of February, 1898.

Q. Pending the receivership, during the time of the receivership?

A. During the time of the receivership, yes, sir.

Q. This animosity has kept up right along ever since that time, has it?

A. Why, it don't seem to quell much.

Q. It don't seem to have abated any, you mean?

A. Not a bit.

Q. It is just as fierce as ever?

A. It seems to be. I think it is exhibited more greatly as coming from Wabash Avenue than from Lake Street.

Q. But it is mutual to a certain extent and reciprocated on both sides, isn't it, Mr. Trumbull?

A. If there is any means at my disposal of gauging the animosity, without desiring to appear free from it myself, I would say that to a very much greater degree it has been exhibited as emanating from Wabash Avenue, than it has from Lake Street—I mean from Mr. Donnell than myself.

Q. Do you recall having had a conversation with Mr. Donnell about a year and a half or two years ago with reference to the feeling between you, what you have done and said, and what he has done and said?

A. You refer to a conversation that was held where?

Q. Why, between you and Donnell in a place—I haven't said the place—I don't know that I know the place in Chicago?

365 A. I have talked with Mr. Donnell on a number of occasions since I ceased to be connected with the concern.

Q. Perhaps I can locate it more definitely. I think it happened a year ago last spring, that is, it will be two years the coming spring; do you recall having a conversation with Mr. Donnell on the subject of this ill-feeling?

A. I don't. If there was some other date furnished me, I might. I feel like repeating the question again, where was the conversation held?

Q. I am not in a position to say that, I am not on the stand and I don't know. I ask you if you recall any such conversation, any time or anywhere.

A. I do not.

Q. Let me refresh your recollection—in Chicago, on one of the public streets, did you meet Mr. Donnell and bring up yourself, or did he bring up this matter of the differences betwen you, and did you then say that you regretted the feeling and regretted what you had said and done, and that the devil had apparently got possessed of you and had stimulated such acts on your part, and that you were sorry and wanted it all forgotten?

A. Up to the present writing I have never apologized to Mr. Donnell for anything.

Q. That isn't an answer to my question. Did you ever have such a conversation?

A. No, sir.

Q. Nor anything approaching it in any way?

A. No, sir, never.

Q. Nothing of the kind has ever happened between you?

A. Never.

Q. You have been an active competitor of Mr. Donnell ever since you entered into the Trumbell Safe & Vault business?

A. I have.

Q. And are in active competition with him now?

A. I am.

Q. And you were at the time you made the affidavit in this case?

A. I was.

Q. Are you connected in any way, or have you been connected in any way with the agency or sale of the product of the Herring-Hall-Marvin Company?

A. Not in any way whatever, sir.

Q. Have you ever sold any of their goods in Chicago?

A. During the time I was with A. L. Deane & Company, yes.

Q. No, I am not asking you about that. I am asking whether you, as president of the Trumbull Safe & Vault Company have, since its organization, sold any of the Herring-Hall-Marvin Company product?

A. Yes.

366 Q. When and to what extent have you been a dealer in their goods?

A. During a visit to their factory just about two years ago, two and a half years ago, I had sh-wn me during a trip that I was making through the factory, a number of second-hand bank safes that the Herring-Hall-Marvin Company had for sale. I saw it to the advantage of our company to buy a carload of them, and having bought them we sold them to various parties, both in Chicago and out of Chicago.

Q. Is that the only instance when you dealt in their product?

A. It is the only instance—we have found it necessary in connection with the repairing of safes to now and then get parts that could only be gotten of them to repair safes of their make that we had traded for that were out of order. Now, the extent of that business has been very, very limited.

Q. Is Mr. Hoffman associated with you in business now?

A. He is.

Q. Has he been since you entered the business?

A. Continuously.

Q. An officer of your company?

A. Yes, sir.

Q. You are president of it, are you?

A. I am president, yes, sir.

Q. What is his title?

A. Secretary.

Q. Do you manufacture safes?

A. Some.

Q. And whose general product do you sell?

A. The McNeil & Urban Company's and the National Safe & Lock Company's of Cleveland, Ohio.

Q. Referring again to this conversation with reference to your going into the new corporation to be formed to be called the Hall Safe & Lock Company, you have related a conversation with Mr. Deane and a conversation with Mr. Donnell, which you say was on the subject of inducing you to invest $1,000.00 in the business and become a part of the new concern. I understood you to say, that in consideration of your contributing $1,000.00 and Mr. Donnell contributing $1,500.00 and Deane contributing $1,500.00, that you were to go in with them on an equal basis, is that correct?

A. That is right, sir.

Q. Do you mean by that that you would have a third interest in the plant?

A. A third interest in the plant.

Q. On what basis was it asserted or alleged by Deane or Donnell or either of them that you were to have a third when you were not contributing an equal amount with them?

367 A. I am not in position to figure what it was that talked to them to make the proposition.

Q. What did they say about it, why should they be willing to give you an equal interest with them when they were contributing a larger amount of money than you?

A. It is likely they had reasons of their own.

Q. You can't answer that, you don't know?

A. I don't know their reasons.

Q. They didn't ascribe any themselves?

A. No, sir.

Q. You had not hitherto been a partner with them?

A. Not at all.

Q. You had been an employee of theirs?

A. Yes, sir.

Q. Let me ask you, Mr. Trumbull, in the interest of fairness to yourself and to everybody else, to recall whether or not you are accurate in saying that Mr. Donnell spoke disparagingly of Mr. Deane and said he was only fit to answer the telephone?

A. He was not fit to answer the telephone.

Q. Mr. Donnell said that of Mr. Deane?

A. Mr. Donnell said that of Mr. Deane, yes, sir.

Q. Isn't it a fact that Mr. Deane remained, up to the time of his death—he is dead, is he not?

A. He is dead.

Q. Do you know when he died?

A. No, sir.

Q. Did you attend his funeral?

A. No, sir, I was not, I was away when he died and when his funeral took place.

Q. Isn't it a fact that from 1898 until 1903 Mr. Deane remained actively in charge, as an officer of the Hall Safe & Lock Company with Mr. Donnell.

A. I don't know.

Q. You wouldn't say that it was not so, would you?

A. That it was not so?
Q. Yes.
A. During that period? I don't think that I have said the store of the socalled Hall Safe & Lock Company more than once or twice.
Q. Did you ever converse with Mr. Deane subsequent to your leaving them?
A. Oh, yes.
Q. Where did you meet him?
A. He came to our store, 117 Lake Street.
Q. More than once?
A. Yes, sir.
Q. During the time he was connected with the Hall Safe & Lock Company?
A. Yes, sir.
Q. How long prior to his death?
A. He was at our store in August, 1900.
Q. Do you recall having seen him since then?
A. Yes.
Q. Frequently?
A. Seldom.
368 Q. Were you on friendly terms with Mr. Deane?
A. Yes.
Q. Do you know what the state of his health was immediately prior to his death for several months?
A. He was a man that never was blessed with good health ever since I knew him. I knew him to have hemorrhages way back in 1886.
Q. Well, don't you know as a matter of fact, Mr. Trumbull, that Mr. Deane had been physically incapacitated for work for two years prior to his decease?
A. I do not.
Q. Do you know George English?
A. I do.
Q. Was he ever in your service?
A. He was.
Q. Do you remember when he was there?
A. My recollection is during the year 1900.
Q. He came to you from South Water Street, did he not?
A. Yes, sir.
Q. Without any experience in the safe business?
A. None whatever. We initiated him.
Q. And he remained with you how long?
A. About nine months.
Q. And he went from you to the Hall Safe & Lock Company?
A. He went from us to the Hall Safe & Lock Company.
Q. Do you recall having discussed with Mr. English the character of Mr. Donnell on any occasion?
A. No, sir.
Q. Do you recall the fact that you attributed to Mr. Donnell an ancestry not particularly complimentary to Mr. Donnell?
A. No, sir, I did not; most positively no.

Q. That expression that is frequently used inadvertently, sometimes, but very disagreeably sometimes, by referring to others; do you remember ever using any such thing to Mr. English?

A. No, sir, I certainly don't.

Q. Or attributing any other moral terpitude to Mr. Donnell?

A. No.

Q. You deny that you ever did anything of the sort?

A. Why, certainly I do, yes, sir. I am no better than I ought to be, but I never attack a man's pedigree.

Q. Did you ever in any of these conversations attribute to Mr. Donnell the lack of honesty, truthfulness or anything else in regard to business?

A. I think likely I did, yes, sir.

Q. You referred to Mr. Donnell in very uncomplimentary terms, did you not? Also to Mr. English, on several occasions?

A. No, not what might be termed uncomplimentary. I undoubtedly am subject to the charge of going on to say that Mr. Donnell was a man to an extent that was unreliable in what he would say.

369 Q. You don't recall referring to Mr. Donnell as a son of a bitch?

A. No, sir, I have never given that title to any man that lives.

Q. You don't remember referring to Mr. Donnell as a damned thief?

A. No, sir, I am not in the habit of using adjectives of that kind whatever.

Q. Are you and Mr. English on good terms?

A. I don't know that we are; no, sir, we are not.

Q. Did he leave you with bad feeling existing between you?

A. Not until we discovered that he was treacherous to us, until he misrepresented who he was going to connect himself with. He gave us to understand he was going to connect himself with a concern entirely foreign to the safe business.

Q. Did he leave you because he said he was going into some other business? What was the reason for his leaving?

A. He was discharged.

Q. For cause?

A. Inability to produce.

Q. There wasn't any disagreement between you and him as to salary to be paid or increased or advanced?

A. No, sir.

Q. You referred some time ago to the labeling on the safes and the advertisements on safes?

A. Yes.

Q. Safes built at the Cincinnati plant by the Hall Safe & Lock Company were labeled how?

A. Hall's Safe & Lock Company.

Q. Safes that were built by them were labeled "Hall's Safe & Lock Company, Cincinnati, Ohio?

A. Cincinnati, Ohio.

Q. That was all there was to it, wasn't it?

A. Not always, no.

Q. Well, what else?

A. "Hall's Safe & Lock Company, Cin-nati and Chicago," Hall's Safe & Lock Company, Cincinnati and Omaha," Cincinnati and New York, Cincinnati and Louisville, Cincinnati and San Francisco and other points where they maintained agencies.

Q. Well, other than the corporate name and the name of cities where their houses were located, that was all that appeared on the safes, wasn't it?

A. I am not clear as to whether it was after the—I am not clear as to when it was that they began to put "Hall's Standard Safes" on the back of the safes.

Q. On the back of the safes?

A. Yes.

370 Q. That is on that part of the safe corresponding to the lintel of a door in front?

A. Yes, sir.

Q. On the top bar?

A. The lower wing of the back angle.

Q. That was a matter of later use than the corporate name on the front, isn't that so?

A. Oh, yes, the corporate name on the front was put on there I presume immediately after the formation of the corporation.

Q. But the use of the word "Standard" on the back of the safe is a matter of recent use, is it not?

A. That depends on what you mean by recent.

Q. I mean within the last ten or fifteen years, say, for example, five or ten years prior to the merger or sale of the Hall Safe & Lock Company to the Herring-Hall-Marvin Company, isn't that your recollection on it?

A. I should think it was about say, fifteen—I should think about 1885, they began putting that name on "Hall's Standard Safes."

Q. The word "Hall's" alone dissociated from other names was never painted on the safes anywhere, was it?

A. Hall alone?

Q. Yes, or Hall's, apostrophe *s*, or Hall Safes were printed on the safes, were they?

A. Not that I know.

Q. You dont' recall that at any time?

A. Not that I remember.

Q. The use of the name "Hall's Safes" was largely a colloquial use among salesmen in the trade, isn't that true?

A. It was advertised on printed matter of their *p*representatives. A concern would be known, for instance, as "Boyer & Company, Omaha, Nebraska. Hall's Safes." Now, that prevailed for a great number of years.

Q. This was true, was it not, that the words "Hall's Safes" was used in the trade very much the same as the word "Diebold" and the words "McNeil & Urban" and the word "Marvin" and the word "Herring," in the same way, they were all designated as Herring's Safes, Marvin's Safes, Diebold's Safes, McNiel & Urban's Safes?

A. Yes, for the purpose of abbreviating and getting quickly at the point.

Q. For designating these safes by the use of the word Hall?

A. Yes.

Q. The same as the use of the word "Diebold"?

A. Yes.

Q. Now, at the time of your employment by A. L. Deane & Company, do you recall that safes were manufactured by the Hall Safe Company of Cincinnati and sold by A. L. Deane & Company?

A. No, sir, they were not.

Q. They were not?

A. No, sir the Hall Safe & Lock Company wasn't in existence.

371 Q. When A. L. Deane & Company were?

A. No, sir.

Q. You are quite certain about that?

A. I know it.

Q. You could not be mistaken?

A. No, sir, I could not be mistaken.

Q. You are as accurate about that as you are about your other dates, are you?

A. I am.

Q. So that A. L. Deane & Company while you were with them—you were with them up to the time of your failure—never sold the product of the Hall Safe Company?

A. They sold some Hall Safe Company's safes.

Q. How could they sell them if they were not in existence?

A. Perhaps I misunderstood your question. I understood your question was, "At the time you were employed by A. L. Deane & Company were the Hall Safe Company manufacturing safes."

Mr. ALDRICH: Yes, that is what he did say, and you dated it back to the date of your employment.

The WITNESS: No, the Hall Safe Company did not come into existence until a number of years after the formation of the firm of A. L. Deane & Company.

Mr. MERRICK: I know that.

Mr. ALDRICH: If you will have your question read I think you will see how it is.

Mr. MERRICK: In using the word "employment" I don't mean when you first began your service. I mean during the time you were there and when you left the Hall Safe Company were making safes, weren't they?

The WITNESS: They were.

Q. And Deane & Company were selling them?

A. They were.

Q. At the same time they were selling safes of the Herring-Hall-Marvin Company?

A. Of the Herring-Hall-Marvin Company, yes, sir.

Q. They sold safes of both concerns?

A. They did.

Q. And that continued up to the time of their receivership?

A. Yes, sir.
Q. When was your Trumbull Safe Company organized?
A. The 17th of March, 1898.
Q. That was about contemporaneous with the organization of the Hall Safe & Lock Company, wasn't it?
A. Just about the same.
Q. And you have your office and store room and sales room on Lake Street?
A. Yes, sir.
372 Q. Have been there continuously ever since?
A. Have been there continuously ever since.
Q. You have never represented the Herring-Hall-Marvin Company?
A. No, sir.
Q. Don't represent them now?
A. No, sir.
Q. Your sales have been in the limited manner that you indicated on your prior examination?
A. Yes, sir.
Q. So that you don't know anything about the business of the Herring-Hall-Marvin Company except as an ordinary citizen or dealer in safes?
A. Only as a competitor, one that endeavors to keep posted in the safe market.
Q. They have never had an office in Chicago until last June, have they?
A. Not to my knowledge.
Q. And have not been active in the trade in Chicago?
A. They have put in quite a lot of work here.
Q. Well, proportionately, small in comparison with other concerns, isn't that true?
A. I would say, yes, still they have sold quite a lot of work here.
Q. I understand, but I am speaking as a business man, the proportion of the work they have done has been small, as far as they are concerned?
A. Yes, sir.
Q. They have not advertised themselves as manufacturers of Hall's Safes, successors to Hall's Safes in Chicago, have they, until this past year, 1904?
A. Advertised by means of literature and stuff of that kind?
Q. Yes.
A. Oh, yes.
Q. Have you received any?
A. We are a subscriber for a publication with an ad. of theirs that has appeared a number of years.
Q. What publication is that?
A. It is known as the Bankers' Review, published in New York.
Q. They haven't advertised in any local papers?
A. Not that I know of.
Q. Nor the directories, city or telephone?
A. No.
Q. Is the check which you testified to in chief, dated February 7,

1898, to the order of George H. Trumbull, for $7.38, signed A. L. Deane & Company?

A. That is the check. (Referring to check about which witnesses testified in direct examination, which check is now produced by the witness.)

Q. The check is stamped on the back, "February 15, 1898." I show it to you for the purpose of identification.

A. That is the check, sir. It is payable to George H. Vaupell.

(Said check is as follows:)

373 (Here follows Check withdrawn by Order of Court of June 12,1905.

(A copy of said check, Cross-Complainant's Exhibit 8 is as follows:)

CROSS-COMPLAINANT'S EXHIBIT 8—CHECK OF FEB. 7, 1898.

CROSS-COMPLAINANT'S EXHIBIT 8.

CHICAGO, *Feb.* 7, 1898. No. 23225.

The Metropolitan National Bank of Chicago.

Pay to the Order of Geo. H. Vaupell $7.38 Seven 38/100 Dollars.

(Signed) A. L. DEANE & Co.

(Printed across end:)

A. L. Deane & Co., Dealers in Herring-Hall-Marvin Co.'s Safes and Deposit Work, 52 & 54 Wabash Ave.

(Written on face:) No funds.

(Rubber stamp on face:) Not over ten dollars 10.

(Pencil notation on face:) 21.

(Endorsed on back:) Geo. H. Vaupell.

(Rubber stamp on back:) Paid through Chicago Clearing House, Feb. 15, 1898 21 Fort Dearborn National Bank.

Q. How did you come into possession of the check?

A. George H. Vaupell is collector of a council of the Royal Arcanum that Mr. Hoffman and myself are members of, and that check was made payable to Vaupell in payment of assessments that were due by Mr. Hoffman and myself.

Q. The check wasn't in payment then of any salary of yours?

A. It was charged to both Mr. Hoffman and myself.

Q. Charged on the books?

A. Yes, sir.

Q. By whom?

A. By myself.

Q. At what time was this check given with respect to the time of the application of a receiver of A. L. Dean & Company?

A. Five days before it.

Q. So that on the 15th of February, 1898, the Metropolitan Na-

tional Bank had placed a receiver in possession of the assets of A. L. Deane & Company?

A. That is right, sir.

Q. And it was owing to the fact that a receiver was placed in possession of the assets of A. L. Deane & Company that there were no funds to meet this check, is that right?

A. That is right.

374 Q. Were there funds to meet this check on the date of its issue.

A. Yes, sir.

Q. And so remained until they went into the hands of the receiver?

A. I believe so.

Q. Does the fact that this check was not paid, owing to the receivership of A. L. Deane & Company rankle in you bosom in any way?

A. No, sir, not a bit, sir.

Q. What is the purpose of your dragging this subject of this unpaid check into this examination?

A. My dragging it?

Q. Yes, you were interrogated about it by Mr. Aldrich, weren't you?

A. About the check, yes.

Q. And you answered about it?

A. Yes.

Q. You called Mr. Aldrich's attention to the fact that you had this check?

A. I did.

Q. You turned it over to Mr. Pullen, the president of the Herring-Hall-Marvin Company?

A. Yes, sir.

Q. For what reason?

A. To show the connection between A. L. Deane & Company and the Herring-Hall-Marvin Company.

Q. The connection between the Herring-Hall-Marvin Company and A. L. Deane & Company?

A. Yes, sir.

Q. How does this check show any connection?

A. A. L. Deane & Company, Dealers, on the check. There is their card which indicates that they were dealers in both Herring-Hall-Marvin Company's safes and in Hall's safes, and they so advertised themselves.

Q. Has that ever been questioned or denied in any way?

A. I don't know, sir.

Q. Is that the only purpose of introducing this check?

A. That is the only purpose.

Mr. ALDRICH: The record may show also that it is the only purpose of cross-complainant in the case, and to meet a certain statement in Mr. Donnell's affidavit filed before the master. We are making no point on the non-payment of the check.

Q. You have referred, both in your affidavit, certainly in your

testimony today as to the reputation of the Hall Safe & Lock Company's safes as being second to none?

A. Second to none.

Q. Isn't it a fact that along in the early nineties and late eighties the Hall Safe & Lock Company's product received a black eye, owing to numerous burglaries that took place in which the reputation of the Hall Safe & Lock Company's safes suffered very materially?

A. Not any more in proportion to the number of safes of
375 Hall's product that were attacked by burglars than those of any other make.

Q. Do you mean by that to say that safes of other manufacturers in the country received the same loss of prestige as the Hall's did?

A. I do, by reason of a decided change in the method of burglarizing safes, the use of nitro-glycerine and dynamite, which was developed about that time, and they all suffered.

Q. So that the reputation of the Hall's was no greater, so far as the burglar proof feature of their safe was concerned, than any other company at that time, is that so?

A. Yes, it was greater.

Q. It was greater?

A. It was greater.

Q. Then the fact that their safes were successfully opened by burglars by the use of explosives didn't damage them as much as other people?

A. Not as much?

Q. Why?

A. For the reason that immediately—well, during that epidemic of successful attacks on the part of burglars we, as sellers of the Hall product, continued to use the statement that had been used for a great number of years, which may, perhaps appear to be somewhat contradictory in view of the success that burglars did make in attacking safes, that we would give $1,000.00 for the name of any concern that ever lost a dollar out of a Hall burglar proof safe; the Hall Company were the only company that ever made use of that statement. That was advertised far and wide; that in connection with an ad. of theirs that showed a burglar in front of a Hall safe, about to attack it, or rather to burglarize—about to attack the safe, and the fact that it had the word "Hall" across the front of the safe, prompted one burglar to say to another: "No go, Jim, It's a Hall. Let's put." The Hall Company advertised that far and wide throughout the country, and while I am not positive it is used in the nature of a trade mark, that it was an out and out trade mark, at least it had a connection between the Hall Safe Company and their product, and no other company advertised as strongly that they advertised burglar proof safes, as strongly as they did.

Q. That buncomb- about "Jim, let's put," and so forth didn't change the fact that the Hall Safe Company's safes suffered from burglarizing, the same as all of them did?

A. That's right.

Q. And shortly after that the construction of burglar proof safes was changed?

A. Yes, changed and in that connection, I would say, as
376 an indication of my belief that they didn't suffer to any tremendous extent—I would say this: If an opportunity were given me, today to use any name in connection with safes in and about territory tributary to Chicago, I would take Hall today in preference to any name that has ever been put on any safe that is sold here.

Q. And during the last eight years safes have been manufactured in Cincinnati by the Hall Safe Company, which are known as the Hall's Safes, have there not?

A. They are known as Hall's Safes, but let it be understood that when it comes to the matter of selling a bank safe, very few bank safes are sold without competition, and in the advertising of the safe by anyone other than—well, by one, say, in the interest of the Diebold Company, if it become known that the Hall Safe Company's product—the Hall Safe Company's product of Cincinnati, was entering in the list for the sale, one of the first points to which the banker's attention would be called by any and all of the other companies, would be the fact that this safe that is being represented here by the Hall Safe & Lock Company, or the Hall Safe Company's representative, is not a safe built by the original company or by the original company's successors.

Q. How long has that sort of a condition of affairs existed, ever since the organization of the Hall Safe Company?

A. Ever since the organization of the Hall Safe Company.

Q. So that you mean to be understood as saying that all the other representatives of safes who enter into open competition with the Hall Safe Company to sell safes make it a point to enlighten the banker or the prospective purchaser that the Hall Safe Company's safes are not the original Hall Safe & Lock Company's safes at all, is that correct?

A. For the purpose of——

Q. Well, answer the question.

A. That is correct.

Q. That is all?

A. That is all.

Mr. ALDRICH: You can add any explanation you wish.

The WITNESS: For the purpose of enlisting fair competition.

Mr. MERRICK: One thing escaped my attention.

Q. At the time of your leaving the service of A. L. Deane & Company and organizing the Trumbull Safe & Vault Company, at the same time that Deane & Donnell organized the Hall Safe & Lock
Company of Illinois, you didn't hesitate to inform the public
377 and prospective purchasers while you were in competition that the Hall Safe & Lock Company of Chicago was not the original Hall Safe & Lock Company of Cincinnati, did you?

A. I certainly did.

Q. And you have made quite a point of that?

A. I have made quite a point of that.

Q. And have done so continuously ever since?

A. Yes, sir.

Q. And what you did in that regard was done by all the others of the safe fraternity?

A. Yes, sir.

Q. Because that was a fact?

A. Because that was a fact, yes.

Q. And there was a general understanding among all the other safe people other than the Hall Safe & Lock Company that that should be done, as a matter of business?

A. Not any more understanding than there is between the devil and holy water, because there is just as much congeniality as there is between the devil and holy water. It is war to the knife.

Q. There is no friendliness among safe people?

A. No, not in business transactions.

Q. Then you don't have the same regard and respectful attitude towards each other as lawyers have toward each other?

A. No, none at all.

Redirect examination by Mr. ALDRICH:

Q. Mr. Trumbull, you may state whether it is a fact that the Hall Safe & Lock Company of Chicago, organized by A. L. Deane & Company, as well as the Hall Safe Company of Cincinnati, have sought to hold themselves out to the public as the original Halls.

Mr. MERRICK: Objected to as not redirect examination.

A. I should say yes.

Q. And you and other dealers in safes have sought to give the public, so far as you could come in contact with the public, and purchasers of safes, information to the effect that they were not the original Halls?

A. Yes, sir, and I have further gone on to state that in all fairness, I individually, as an ex-employé of the old original Hall Safe & Lock Company, was just as much entitled to the use of that name as those who took it.

Q. Something has been said here about the lack of good feeling between you and Mr. Donnell, or perhaps animosity between you two gentlemen. I will ask you, Mr. Trumbull, whether or
378 not there is any such state of feeling between you, or entertained on your part as would color or interfere with the truthfulness of your testimony in this case?

A. Not in one iota, and if I were to put the question direct to Mr. Donnell as to whether or not each and every word that I have uttered in connection with this matter is or is not absolute truth, it is my firm conviction he would say it is the absolute truth.

Q. You are not swerved or influenced in any degree by any such animosity as has been referred to?

A. Not in the least.

(Thereupon the following question was read: Mr. Trumbull, you may state whether it is a fact that the Hall Safe & Lock Company of Chicago, organized by A. L. Deane & Company, as well as the Hall Safe Company of Cincinnati, have sought to hold themselves out to the public as the original Halls.)

Mr. ALDRICH: Your answer was, Yes.
(The answer was read as follows: "I should say yes.")

Mr. MERRICK: The reason you make that answer is your belief based on the actions of the company as you have observed them rather than any knowledge of their intentions in the matter. You don't pretend to know what is in their minds?

The WITNESS: No, and supplemented by what the public convey to us.

Q. And when the public convey that to you, you take elaborate pains to disabuse them of that idea?

A. I do, certainly do.

Q. And attempt to take all the virus out?

A. And attempt to take all the virus out.

Testimony of William A. Hoffman.

WILLIAM A. HOFFMAN, produced as a witness in behalf of cross-complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. ALDRICH:

Q. State your name?

A. William H. Hoffman.

Q. Where do you reside?

A. 979 West Polk Street, Chicago.

Q How long have you lived in Chicago?

A. Fifteen years.

379 Q. In what business have you been engaged?

A. The safe business.

Q. With what concerns?

A. With A. L. Deane & Company and with the Trumbull Safe & Vault Company.

Q. How long were you with A. L. Deane & Company?

A. I was with A. L. Deane & Company about nine years, 1889 to 1898.

Q. And have been with the Trumbull Safe & Vault Company since its formation?

A. I have.

Q. What was your capacity with A. L. Deane & Company?

A. I was general utility man, I suppose, salesman, assistant bookkeeper and collector.

Q. You are a brother-in-law, I believe, to Mr. Trumbull?

A. Yes, sir.

Q. Do you know Mr. Donnell here?

A. I do.

Q. It appears in evidence that A. L. Deane & Company went into hands of receivers about February, 1898?

A. Yes, sir, that is my recollection.

Q. Were you present at any conversation between any member of that firm and Mr. Trumbull with reference to the organization of some new company?

A. No, sir, not present—no, sir, I think not. I knew of it through Mr. Trumbull telling me of it at the time.

Mr. MERRICK: Well, you wouldn't be permitted to testify to that.

Mr. ALDRICH: State whether you had any conversations with A. L. Deane & Company or Donnell with reference to it?

The WITNESS: No, sir, I did not.

Q. The only information that you had then with reference to any proposition made by Deane or Donnell to Trumbull, you acquired from Trumbull and not otherwise?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. What, if anything, do you know as to the character in which the Hall Safe & Lock Company has been doing business since it was organized?

A. Which Hall Safe & Lock Company?

Q. Organized by Deane and Donnell?

A. Why, I know that they have been doing business under the name of the Hall Safe & Lock Company.

Q. Have you any information or knowledge as to whether they held themselves out as the original Hall Safe & Lock Com-
380 pany, or successors thereto?

A Yes, sir, they have been holding themselves out as the original Hall Safe & Lock Company and its successors

Q. Had the Hall's safes come to be well known prior to the sale of the Hall Safe & Lock Company of Cincinnati to the Herring-Hall-Marvin Company?

A. At the time I was with A. L. Deane & Company, the Hall Safe & Lock Company that manufactured safes were very well known.

Q. By what name were the safes manufactured by the Cincinnati concern known to the trade?

A. Hall's safes, Hall's Safe & Lock Company safes. When you speak of a Hall safe, you speak of a safe manufactured by the Hall Company at Cincinnati.

Q. Were the words "Hall's Standard Safes" likewise used?

A. Yes, sir.

Q. And had the product come to be generally and favorably known or otherwise?

A. It had become generally and favorably known by lookers for safes.

Cross-examination by Mr. MERRICK:

Q. You say, Mr. Hoffman, that the Hall Safe & Lock Company of Chicago has held itself out as the original Hall Safe & Lock Company of Cincinnati and successors to it?

A. Yes, sir.

Q. How have they done that?

A. Why, by giving it out to prospective customers and people in general.

Q. How have they done it, I said? Have they ever advertised themselves as successors of the original Hall Safe & Lock Company?

A. They have advertised themselves that the only safes made by the Halls were sold by the Hall Safe & Lock Company at 52-54 Wabash Avenue.

Q. Well, that is true, isn't it?

A. No, sir, not according to my understanding, it is not, no, sir.

Q. Do you know of any Halls that are connected with any other safe company, other than Edward Hall and William H. Hall of Cincinnati, of the Hall Safe Company?

A. The Herring-Hall-Marvin Company are the ones that manufacture Hall safes also.

Q. They manufacture the Herring-Hall-Marvin Company's safes, don't they?

A. Hall's safes too.

Q. Do they advertise them as Hall safes?

A. Yes.

Q. Where?

A. Here in Chicago and all over the country.

Q. When have they advertised in Chicago?

A. Where?

Q. When?

A. I think they always have.

Q. Don't you know, as a safe man in Chicago that they
381 haven't had an agency here since the organization of the company until last June?

A. Why, they haven't had any safe agency here since the organization.

Q. Of the Herring-Hall-Marvin Company?

A. Since the organization of the Hall Safe & Lock Company in 1898.

Q. Why, they had not had it before, had they?

A. A. L. Deane & Company handled their goods.

Q. Yes, and they handled the Herring-Hall-Marvin Company's goods; they didn't handle any of Hall's goods, so marked, did they?

A. They handled the Hall goods, yes, sir.

Q. They handled the Herring-Hall-Marvin Company's goods?

A. And the Hall goods.

Q. So marked, weren't they?

A. And safes made at the Hall Works, the Hall Safe Works, yes, sir.

Q. Now, Mr. Hoffman, you must be accurate about this in order that your testimony may be of service to anybody. Be accurate. Don't you know as a matter of fact that the Herring-Hall-Marvin Company have never advertised, on their safes or anywhere else, that they are their safes, anything but the words Hall's Safe & Lock Company?

A. Hall Safe Works, Cincinnati, Ohio.

Q. They had a branch there called the Hall Safe & Lock Works?

A. Yes, sir.

Q. That is, their plant was called the Hall Safe & Lock Works?

A. Yes, sir.

Q. How long ago was that?

A. I don't know anything about the dates of that.
Q. You don't know anything about that except from hearsay, do you?
A. From seeing the names on the safes.
Q. Where?
A. At A. L. Deane & Company's, and occasionally we run into safes now with the Hall Safe & Lock Works' name on at present time.
Q. Old safes?
A. Safes that were made by the Hall Safe & Lock Works.
Q. They are old, second hand safes, are they not?
A. Yes, sir.
Q. Where have the Hall Safe & Lock Works of Chicago ever advertised themselves as successors to the original Hall Safe & Lock Company of Cincinnati?
A. I have seen it in the Bankers' Directory, the Bankers——
Q. Can you produce any copy of a paper showing that they have advertised themselves as successors of the Hall Safe & Lock Company?
A. Yes, sir.
382 Q. I wish you would, and I will not cross-examine you any further until you do.
A. Yes, sir.
Mr. ALDRICH: Very well, look up the paper and come back at any time this afternoon.
The WITNESS: I will look it up and bring the paper over this afternoon.
Mr. ALDRICH: Get as old a date as you can.
The WITNESS: I will get an old and a new both.
Mr. ALDRICH: Listen to the question. We will have it read.
(Question read as follows: Where have the Hall Safe & Lock Company of Chicago ever advertised themselves as successors to the original Hall Safe & Lock Company of Cincinnati.)
The WITNESS: I didn't understand the question. I thought it was, where did the Herring-Hall-Marvin Company advertise themselves as successors to the Hall Safe & Lock Company.
Mr. MERRICK: Then you want to change your answer, don't you?
The WITNESS: Either change the answer or change the question. You can do either.
Mr. MERRICK: Well, I will put the question to you again:
Q. Have you ever in your life, anywhere, seen advertised or an advertisement of the Hall Safe & Lock Company of Chicago, advertising its safes as successor to the Hall Safe & Lock Company of Cincinnati?
A. I don't recollect of ever having seen any such, no sir.
Mr. ALDRICH: You understood the question to be that you had seen advertisements where the Herring-Hall-Marvin Company advertised itself as successors to the Hall Safe & Lock Company of Cincinnati?
The WITNESS: Exactly, yes, that was my understanding of the question.

Mr. MERRICK: This residence that you have given is the residence of Mr. Trumbull, isn't it, on Polk Street?

The WITNESS: No sir, Mr. Trumbull is 984; my number is 979.

Q. You are a close neighbor of his?

A. Yes, just opposite.

Q. And you are an officer of the Trumbull Safe & Lock Company?

A. Yes, sir.

Adjourned until 11 o'clock A. M., January 6, 1905.

383 JANUARY 6, 1905—11 o'clock a. m.

Continuation of testimony to be taken at the office of Aldrich & McAuley, 618 Home Insurance Building.

Met pursuant to adjournment.

Present, as before.

Testimony of George H. Brooks.

GEORGE H. BROOKS, produced as a witness in behalf of Cross-complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. ALDRICH:

Q. State your name?

A. George Hamilton Brooks.

Q. Where do you reside, Mr. Brooks?

A. Here in Chicago.

Q. Whereabouts in Chicago?

A. Well, since that deposition I am at 516 West 67th street.

Q. In what business are you engaged?

A. Selling safes.

Q. For what Company?

A. Trumbull Safe & Vault Company.

Q. How long have you been engaged in that business?

A. With this firm?

Q. No; in the safe business?

A. Oh, nearly twenty years.

Q. With what firm or corporation were you first connected?

A. Well, I was with,—first connected with an agency representing—not with a safe company,—I was with O. A. Cavan of St. Paul.

Q. What safes was that firm selling?

A. The Hall Safe & Lock Company's safes.

Q. Cincinnati, Ohio?

A. Yes, sir.

Q. How long were you with Cavan?

A. About seven years.

Q. And from that place where did you go?

A. Came to Chicago.

Q. And with what firm or corporation did you connect yourself?

A. A. L. Deane & Company.

Q. In what year was that, Mr. Brooks?

A. That I connected myself with them?
A. Yes.
A. 1891.
384 Q. And for how long a time did you continue to work for A. L. Deane & Company?
A. Why, as I remember I think it was somewhere between six and seven years.
Q. Up to the time of their failure?
A. No, sir.
Q. How long before the failure did you quit?
A. I think a couple of years.
Q. With what firm, if any, or corporation did you connect yourself upon quitting the services of A. L. Deane & Company?
A. Well, with the Hall Safe & Lock Company at 52 Wabash avenue, that is, directly after the failure.
Q. Were you out of the safe business for a year or two?
A. Yes sir—well, I perhaps ought to supplement this to get this clear,—I am taking this a little bit on memory, but of course I can verify it. I think I left A. L. Deane & Company in '95 or '96; then I travelled for a few months for the Herring-Hall-Marvin Company up in Minnesota; I was out of the safe business for practically nearly a year I guess; then in the spring, I think it was, of '98 that I went into the employ of the Hall Safe & Lock Company.
Q. Of Chicago?
A. Of Chicago.—after the failure, you understand, of A. L. Deane & Company.
Q. Yes, I understand it Mr. Brooks. In canvassing for the product sold by the Hall Safe & Lock Company of Chicago were you given any instructions by either Mr. Deane or Mr. Donnell in reference to your representations as to that product, and if so, what were those instructions.—First, say whether you got any instructions?
A. Yes, sir.
Q. Go ahead, tell what the instructions were.
A. The instructions in a general way were to the effect——

Mr. MERRICK: No, I object to your summary or generalization or conclusion as to what the instructions were. What were they, what did Mr. Deane say or what did Mr. Donnell say?

Q. Now go on and answer the question. Counsel has a right to object.
A. —gave me to understand——

Mr. MERRICK: No, I object to what they gave you to understand; I want you to answer the question as it was asked,—what instructions did you get,—in other words, what did they tell you to do?

Q. Go on and answer the question.
A. Why they—to give the general impression that it was the Hall Safe & Lock Company; that is, that it was the old original Hall Safe & Lock Company.

385 Mr. MERRICK: I move that the answer be stricken out as not responsive to the question and as a conclusion of the witness.

Q. By whom were these instructions given?
A. By Mr. Deane and Donnell.
Q. Give the language as near as you are able, Mr. Brooks?
A. Well I am not so sure that I could do that by memory,——
Q. Well, the substance of it.
A. —because as I say, if you object to that answer, these things were by general inferences and suggestion as the matters would come up; the question would be, How about this, this the regular old Hall Safe? Yes, sir, Hall Safe & Lock Company, and if you question that in any way, shape or manner you can ask Mr. Deane or Donnell, either one of them.—But, in a positive written statement, I don't mean that they were in that way, not in the sense that I was—that it was written out and I had to follow certain statements of that effect.
Q. As I understand you, the instructions in substance were that in the event that any questions were asked, you were to give the impression that the company was the original Hall Safe & Lock Company?
A. Yes, sir.

Mr. MERRICK: I object to the question as leading and suggestive.

Q. You may state whether or not occasions arose from time to time where inquiries were made of you with reference to what that Hall Safe & Lock Company of Illinois, was?
A. Yes, sir, they were.
Q. What answer did you make during the course of your employment to such inquiries?
A. That it was the old Hall Safe & Lock Company.
Q. What, if anything, was said at any time with reference to the position of the Hall boys, as they were known, being sons of Joseph L. Hall, the original founder of the Hall Safe & Lock Company of Cincinnati?
A. I don't know as I get the drift of that question.
(Last question read by the reporter.)
A. Well, I don't believe I could answer that question.
Q. I have noticed advertisements in the paper, and such advertisements likewise appear in the record in this case, inserted by The Hall Safe & Lock Company of Chicago to the effect that the only safes made by the Halls are sold by The Hall Safe & Lock Company 52 and 54 Wabash avenue; do you recall that anything was
386 said about that during the time that you were in the service of the Company?
A. I do not just at this time.
Q. You may state whether or not the product of The Hall Safe & Lock Company of Cincinnati had become well known throughout this territory and throughout the United States?
A. Yes, sir.
Q. Was it favorably known?
A. Yes sir.
Q. By what name was such product known?
A. Hall Safe & Lock Company.
Q. That was the name of the corporation?

A. Yes, sir.
Q. But I am asking you, what was the safe known as?
A. Oh. As Hall's safes.
Q. When, if you know, if at all was The Hall Standard Safe first used?
A. I don't know that.
Q. Had it been used for a number of years?
A. Yes, sir.
Q. Prior to 1898?
A. Yes, sir.
Q. So that, if I understand your testimony, it would have been of great advantage to any firm or corporation to advertise and sell Hall's safes or Hall's Standard safes in this territory, would it not?
A. I don't quite get that question.
(Question read by the reporter.)
A. Yes, sir.
Q. While you were at work for the Hall's Safe & Lock Company of Chicago, by what firm or corporation was the product sold, manufactured?
A. Why, you refer now to Chicago?
Q. Yes.
A. Hall Safe Company.
Q. What were you informed the Hall's Safe Company was?
A. Well, I couldn't answer that I don't think.
Q. You knew it or believed it to be a corporation, did you not?
A. Yes, sir.
Q. You may state whether you had any information as to whether or not any of the original Hall family were interested in that corporation?
A. Yes, sir.
Q. What information did you have upon that subject, and from whom did you obtain it?
A. Why—I got that idea from their, the boys, being up there and in the office and their name being identified with the company, that is, the Hall Safe Company.
Q. When you speak of "the boys," to whom do you refer?
A. I refer to the Hall boys, the sons of Joseph L. Hall, I am not sure that I can give the initials, the first names.

387 Q. During the course of your employment, I understand you to say then, that you saw some of the Hall boys in the office at 52 and 54 Wabash avenue, Chicago?
A. Yes sir.

Mr. ALDRICH: That's all.

Cross-examination by Mr. MERRICK:

Q. Mr. Brooks, I don't want to be unduly inquisitive, but did you say what your age is?
A. Fifty-one.
Q. When did you first get into the safe business?
A. What year?
Q. Yes.

A. 1884.

Q. As I understand your testimony, you were employed then by—what concern?

A. O. A. Cavan of St. Paul.

Q. And you remained with them how long?

A. About seven years.

Q. That brought it up to '91?

A. Yes, sir.

Q. And then you went with A. L. Deane & Company?

A. Yes sir.

Q. And you remained with them until 1896, as I understand?

A. I think it was '95 or '96, I wouldn't want to be positive about that.

Q. And then you entered the service of the Herring-Hall-Marvin Company?

A. Yes.

Q. At what point, where?

A. Through Minnesota.

Q. Headquarters at St. Paul I suppose, or Minneapolis?

A. No, sir; I was on the road as a general salesman; headquarters was Cincinnati.

Q. But that was your territory?

A. Yes sir.

Q. And you remained with them until what time, and went with The Hall Safe & Lock Company of Chicago?

A. I was with them but a few months.

Q. That is, the Herring-Hall-Marvin people?

A. Yes sir.

Q. How long were you with them?

A. Oh, it was—I could only say in that way, a very few months, unless I verified by looking it up.

Q. Well, less than six months as general salesman or in their service altogether, is that right?

A. Well, it don't exceed six months I don't think.

Q. And that will bring you up to, say, about the first of the year 1897,—will that be about right?

A. '97,—yes, sir.

Q. And then when did you go into the employment of Hall's Safe & Lock Company of Chicago?

A. In 1898—now the interval in that time I was with another company.

Q. You were with another company?

A. Yes sir.

388 Q. In the safe business?

A. No sir, I was with the American Brokerage Company of Chicago.

Q. Now, when you were with the Herring-Hall-Marvin Company that was prior to its receivership, was it,—they hadn't gone into the hands of a receiver when you left their employ?

A. I don't know that.

Q. You don't know whether they did, or not?
A. No sir.
Q. You can't recall whether you were employed by the r-ceiver or by the original company before they went into liquidation?
A. No I don't, not now.
Q. Did you see the product as it was manufactured by the Herring-Hall-Marvin Company and delivered to your customers?
A. What? The time that I was with them?
Q. Yes. Where were their factories then?
A. Cincinnati I think, I wouldn't be sure——
Q. Don't you know where it was?
A. I wouldn't be sure whether they had moved to Hamilton then, I haven't refreshed my mind.
Q. They had an office at Cincinnati?
A. Yes.
Q. You don't remember whether they had gone to Hamilton?
A. If they had gone to Hamilton the office would have been in Hamilton, but I couldn't tell without refreshing my recollection whether they'd moved to Hamilton.
Q. Will you answer now whether you noticed particularly the product manufactured by the Herring-Hall-Marvin Company at that time, as to how they were labelled and marked?
A. No sir, I did not.
Q. You wouldn't be able to testify on that subject definitely?
A. No sir.
Q. Recollection isn't keen, is that right?
A. Well, for the reason largely that I didn't see them in a great many cases.
Q. Then the answer is, generally, no?
A. No sir.
Q. Now I want to be perfectly fair with you Mr. Brooks: do you want to be understood as testifying in this case that either Mr. Donnell or Mr. Deane ever told you in so many words to represent or to tell customers that you were soliciting orders from, that it, the Hall Safe & Lock Company of Chicago, was the old Hall Safe & Lock Company of Cincinnati?
A. Yes sir.
Q. Well, who told you that?
A. This was given to me, in answer to a question which you objected to, in a general way.

Q. I'm not talking about a general way, I'm asking you
389 now, Mr. Brooks, the specific question, Did either Mr. James W. Donnell who is here in this room, or Mr. A. L. Deane who is now dead, ever tell you, Brooks, to tell your customers that the Chicago corporation was the old Cincinnati corporation of the same name?
A. I answered that question.
Q. How do you answer it now?
A. I answered it yes.
Q. Well, who was it, Donnell or Deane?

A. I am telling you that it was given to me by both of them in a general way.
Q. Oh, no, no, no, no. You don't answer the question.
A. That is the only way I can answer the question.

(The last question on the previous page read by the reporter.)

Q. Yes or no, I want.
A. I answered yes.
Q. Now who, which one was it?

Mr. ALDRICH: He's answered that.
Mr. MERRICK: No, he hasn't.

The WITNESS: I answered that question.
Q. I want you to answer it again; which one was it?
A. My answer I think to that was,—if the reporter has it, that both in a general way.
Q. Both in a general way?
A. Yes sir.
Q. Did they ever tell you specifically to state that fact in a special way, or is that a mere inference that you draw from the general talk,—is that what you want to be understood as meaning and saying?
A. I don't mean to say that, as I said before that this was not written out with positive instructions.
Q. No.
A. I don't mean to say that.
Q. No. They never gave you any written orders to do so, did they?
A. No written instructions, no sir.
Q. Did they ever give you verbal instructions to represent that the Chicago corporation known as The Hall Safe & Lock Company of Chicago was identical with the Cincinnati corporation known as the Hall Safe & Lock Company?
A. As I said, in a general way.
Q. And you can't say which one of them gave you this in a general way,—is that the idea?
A. No sir.
Q. You knew that wasn't so, didn't you?
A. Knew that——
Q. You knew they were not identical, didn't you?
A. I knew that they were not one and the same.
Q. Certainly. And you knew that if you did make such representation it would be a lie, didn't you?
A. Well, that would—not necessarily.
390 Q. Why not necessarily?
A. I wasn't supposed to know the facts in regard to the matter.
Q. You weren't?
A. No sir.
Q. You had been employed by the Herring-Hall-Marvin Company, hadn't you?

A. Yes sir.

Q. Did you know that they had absorbed the Hall Safe & Lock Company of Cincinnati?

A. Yes sir.

Q. You had so stated, hadn't you?

A. Yes sir.

Q. And knew that to be a fact?

A. Yes sir.

Q. Then you knew it would be a lie if you so stated, didn't you?

A. That it would be a lie?

Q. Yes.

A. Well—not in that sense.

Q. You knew it would not be the truth, didn't you?

A. Well, it wasn't in the sense that you put it, it would not be.

Q. Well, a thing is either true or false,—a statement is either true or false, isn't it?

A. Well—yes sir.

Q. Then if you received this information you knew that it wasn't so, didn't you? You, yourself, Brooks, knew in your own inner consciousness that it wasn't so, didn't you?

A. No, I couldn't answer that that way, couldn't answer it that way, no sir.

Q. Couldn't answer that you didn't know?

A. No sir.

Q. You knew, didn't you Mr. Brooks, that the Hall Safe & Lock Company of Cincinnati had gone out of business, surrendered its charter, and the like?

A. Yes sir.

Q. You knew that, didn't you?

A. Yes sir.

Q. And you knew this was a new, a young corporation in Chicago?

A. Yes sir.

Q. And if they told you it was the old corporation you knew it wasn't so?

A. When you say that I knew these things, I can't say as a positive fact, only as information that came to me.

Q. You believed that to be the facts?

A. Yes sir.

Q. I don't mean any technical knowledge, but I mean as we ordinarily know things, you knew that wasn't so?

A. Well, I used to question it somewhat.

Q. You never told a customer that, did you?

A. I wouldn't be positive about that.

Q. If you ever did, you lied, didn't you?

A. I wouldn't be positive I ever made that statement, I doubt very much, I used to be very guarded.

Q. You never represented that to anybody?

A. That it was the old Hall Company?

391 Q. Yes, you never told customers so, did you?

A. Yes.

Q. Then you didn't tell a lie?

A. Well, it is possible I gave them to understand, on my general instructions, that it was the old Hall Safe & Lock Company.

Q. Let me ask if this isn't the fact, didn't you tell them that the Hall Safe & Lock Company of Chicago product was made by the firm which was the old Hall Safe & Lock Company?

A. I don't remember it that way, sir.

Q. Wouldn't that be the natural way for you to tell them?

A. Not on the general instructions that had been given me.

Q. Do you mean to say that you received instructions of which you are unable now to give any specific item by either party, knowing it to be contrary to the fact, that you carried out those instructions and told the public, prospective customers what was not so and which you knew not to be so,—do you want to go on record as making that statement?—Take time, I want to be fair with you.

A. I have stated here before as clearly as I can, it was all on a general, as I say on a general inference, these things.

Q. Oh! This was a mere inference as to what the instructions were,—is that it?

A. No, these things were given me but in a general way.

Q. I may be extremely opaque, but I haven't yet got a correct idea of what you mean by saying that you received in a general way certain instructions and that from inference you construed those instructions to mean certain things. Now I want to have read to you the last question and I want you to answer it again. I want to be perfectly fair with you, I want you to answer it.

(Question read by the reporter as follows: Q. Do you mean to say that you received instructions of which you are unable now to give any specific item by either party, knowing it to be contrary to the fact, that you carried out those instructions and told the public, prospective customers what was not so and which you knew not to be so,—do you want to go on record as making that statement?—Take time, I want to be fair with you.)

A. I wouldn't care to answer it.

Q. You wouldn't care to answer it?

A. No.

Q. Is that the best answer you want to make to me today?

A. I really don't see how I can answer it, that is, in a way that is satisfactory to you; I am just as anxious,—I tell you I have
392 no interest in this in any way, shape or manner only to put the matter in as clear a light as possible.

Mr. MERRICK: I don't want any speech.

Mr. ALDRICH (to the witness): You have a right to make an explanation.

Mr. MERRICK: But he isn't explaining.

Q. I'll put the question to you in another way and it ought to be so clear you can answer it without any difficulty at all: Do you mean to say now that you made representations to your trade for the purpose of selling goods, that you knew at the time you made them to be false?

A. I don't think I could answer that question satisfactorily.
Q. Can't you say yes or no? It will be perfectly satisfactory to me one way or the other, I don't care which you say, not the slightest.
A. I don't care to say either.
Q. You don't?
A. No sir.
Q. Is that the only answer you are going to make?
A. Yes sir.

Mr. MERRICK: That's all.

Redirect examination by Mr. ALDRICH:

Q. You did seek to have your trade understand, did you not, that in buying the product which you offered for sale they were buying what was commonly known in the trade as the Hall product?
A. Yes, sir, whenever the matter came up.
Q. And you did this, as I understand you, pursuant to general instructions and suggestions received from both Deane and Donnell?
A. Yes sir.

Mr. ALDRICH: That's all.
Mr. MERRICK: I merely want to ask one or two questions I omitted:—

Q. You are now with the Trumbull Safe & Vault Company?
A. Yes sir.
Q. And have been how long?
A. A little over three years.
Q. And George T. Trumbull is the President and Manager and director of the concern?
A. Yes sir.
Q. And you are salesman for them?
A. Yes sir.
Q. You hold no office or position other than that with the company?
A. No sir.
Q. Have you discussed this case with Mr. Trumbull?
A. Why, only in a general way, which would be perfectly natural coming up as it has.
393 Q. How long since you discussed it with him, in a general way or in a specific way or in any way?
A. Why, at the time about these affidavits were given.
Q. Not since,—that was last July?
A. Yes.
Q. Haven't talked with him since about it?
A. Oh, it may have been mentioned; I don't remember any specific time, only in a general way, as it came up in general conversation.
Q. Talk about it frequently with him?
A. No sir.
Q. You have discussed it frequently with him, haven't you?
A. No I wouldn't say that; it was only in a general way as the

matter might come up, when we would see the name mentioned in the paper, Hall's Safe & Lock Company, advertisements in the paper, we'd wonder how it was they were still using that name.

Q. It rankled in your bosoms, didn't it?

A. Well, we'd wonder how they continued to use that name.

Q. Did you when you were selling safes for the Herring-Hall-Marvin Company or prior to that time, ever see any safes sold that were labelled Standard, Hall's Standard Safes?

A. Do you mean Hall Standard Safes or Hall's safes, Hall's Safe & Lock Company?

Q. Either way.

A. As I remember I saw them on the Herring-Hall-Marvin, and always on the Hall's Safe & Lock Company, the old company, Standard Safes.

Q. Whereabouts on the safe did you see it?

A. Why, sometimes in front, but as I remember mostly on the top back bar of the safe.

Q. And that was with reference to both the Herring-Hall safes and the Hall Safe & Lock safes?

A. Yes sir.

Q. That was covering what period of time?

A. Well, so far back as I can remember it the Hall Safe & Lock Company, I have always connected that word "Standard" with them.

Q. That don't answer the question. I didn't ask you what you recognized or what you conceived to be the fact,—I am asking you now for time, meaning years, a certain period of time, which is the idea conveyed by "when." When did you see the word- "Standard safes"?

A. When did I?

Q. Yes.

A. When I first went into business with them, when I first went into the employ of O. A. Cavan.

Q. Well, that was in 1884?

A. Yes sir.

Q. You saw the word "Standard" safe then on the back bar or top——

A. —or front, I wouldn't be so positive just where it was.

Q. One or the other?

394 A. Yes sir.

Q. And those were on Hall's safes?

A. Hall Safe & Lock Company's safes.

Q. Hall Safe & Lock Company's safes?

A. Yes sir.

Q. And the same fact was true with reference to the Herring-Hall-Marvin safe, after they began manufacturing them?

A. That is my best judgment, yes sir.

Mr. MERRICK: That's all.

Mr. ALDRICH: That's all. I think the Cross-Complainant rests.

Whereupon an adjournment was taken subject to further notice.

THE HALL SAFE & LOCK COMPANY, Complainant,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Respondent.

HERRING-HALL-MARVIN SAFE COMPANY, Cross-Complainant,
vs.
THE HALL SAFE & LOCK COMPANY and JAMES W. DONNELL, Cross-Defendants.

TUESDAY, *January* 31*st*, 1905—2:30 o'clock p. m.

Continuation pursuant to adjournment.
Present: Mr. Merrick, Mr. Aldrich.

Testimony of James W. Donnell.

JAMES W. DONNELL, called in rebuttal on behalf of complainant and cross-defendants, testified as follows:

Direct examination by Mr. MERRICK:

Q. Mr. Donnell, I think you have already testified that you know George T. Trumbull, witness who has been called in this case on behalf of the defendants?

A. Yes, sir.

395 Q. He testified before the Examiner on the fifth day of January, last, that he had a conversation with you in the presence of Mr. Deane, deceased, or with you alone, at which time he says there was under discussion a proposition to take him into business with you, on equal terms with yourself and Deane, he to contribute one thousand dollars and you and Deane each to contribute fifteen hundred dollars,—will you state whether or no any such conversation as testified to, you having heard the testimony, ever occurred?

A. No, sir.

Q. Did you ever have any conversation with Mr. Trumbull in which he spoke of his going into business with you, either in a corporation or a partnership?

A. No, sir, never had any conversation with him at all.

Q. If he ever had any conversation of the kind that he testified to with Mr. Deane, deceased, did you ever hear of any such conversation?

A. No, sir, I never did; never heard of it.

Q. Do you recall the testimony of Mr. Trumbull in that regard?

A. Yes, sir.

Q. Have you since his testimony was given, read over a transcript of his testimony?

A. Yes, sir.

Q. And you now say no such conversation ever occurred?

A. Never had any thought of taking Mr. Trumbull in partnership with me or with Mr. Deane and——

Mr. ALDRICH: I object to what you thought.

Mr. MERRICK: Never mind about what you thought; did you have any talk with him?

A. No, sir; never talked with him about that.

Q. Nor with Mr. Hoffman?

A. No, sir, nor with Mr. Hoffman either. Mr. Trumbull's statement as to him putting in one thousand dollars and Mr. Deane putting in fifteen hundred dollars and me putting in fifteen hundred dollars, and he and Mr. Deane taking charge of the business and me going on the road is simply absurd because I was the only practical one of the three; neither one of them knew about the safe business,—the practical part of it, and I was too old a hand to commence travelling on the road again and make any such proposition as Mr. Trumbull testified to.

Q. Did you have any talk with Mr. Trumbull on the streets of Chicago, at any time, with reference to the enmity or ill-
396 feeling existing between you and Mr. Trumbull?

A. Yes, I did.

Q. State when and where it was and what, in substance, that conversation was?

A. It was last spring.

Q. Do you mean 1904?

A. Yes, sir, the spring of 1904. Mr. Trumbull met me on the street.

Q. In Chicago?

A. In Chicago; he met me and shook hands with me and said he would like to have some sort of conversation with me and wanted to know if I would object to taking lunch with him; I told him, no; he said we would go over to the College Inn and have lunch, that he would like to talk with me; so we went to lunch and he commenced by saying that he did not know why it was he had been so bitterly opposed to me and my actions; that he and his wife had talked matters over and she had said she thought I was always friendly to Mr. Trumbull and never had done him any injury and she thought if us two could in any way at all get together, why there would be not only a better feeling but she thought the competition would be less stronger and that we both could make more money out of the business. He said he did not know what was the matter of him unless the Devil had got into him, but notwithstanding all that, he was very sorry for what he had said and done; I told him that was all right, that I never paid any attention to that, to what occurred because we were strong competitors of his, and then he wanted me to enter into some business arrangement with him, and in this I put him off in a quiet way because I did not care to have any business dealings with him at all.

Q. That is the substance of that conversation?

A. That is about the substance of it, yes, sir.

Q. Mr. Trumbull was placed in charge of your assets at the time of your, by "your" I mean A. L. Deane & Company's failure and the appointment of receiver for A. L. Deane & Company, was he not?

A. Yes. He was custodian for the Receiver.

Q. During that time did anything occur with reference to his being custodian under the receiver, about his selling other safe products than the assets in his charge as custodian?

Mr. ALDRICH: I object as geing incompetent and immaterial.

Q. Yes, sir, while he was in charge there he sold a safe to M. A. Meade, the jeweler,—wholesale jeweler, and Mr. Meade
397 thought he was buying it from Mr. Deane and myself and came over a short while afterwards and wanted to know how we were getting on with it; and we found we had nothing on our books regarding it; we found that Mr. Trumbull had sold a National safe to M. A. Meade & Company and no record of it was on our books, nor did Mr. Trumbull give us any record of the sale.

Q. Did any controversy ever arise out of the sale?

A. Yes, sir, we spoke to Mr. Meade about it and telephoned Trumbull about it, and he said that he was not selling Hall's safes any more and he had a perfect right to sell Mr. Meade.

Q. When was this sale made?

A. While Mr. Trumbull was in as custodian for the receiver.

Q. And you discovered it after he went into business for himself?

A. Shortly after, yes sir, after the receiver was discharged. Mr. Deane and I both knew of this and we knew of other things that Mr. Trumbull had done; I knew also that Mr. Trumbull had been trying to go into business for himself for three or four years previous to this time as he talked to a great many of my men about going in with him. As a matter of course, my men came to me with this information.

Q. There has been some testimony as to the use of the words, "Hall's Standard Safes" on the product of the Herring-Hall-Marvin Safe Company,—do you know concerning that?

A. I never put it on when we were selling their safes.

Q. Not on the back of the safes?

A. No, sir, we never put it on; we have got some of their safes in town here; I have looked at fifteen or twenty of them and never found it on any of them.

Q. Then up to the time of the formation of the corporation of which you have been president, the late Hall Safe & Lock Company of Chicago, as I understand you, the words "Hall's Standard Safes" did not appear on the product of the Herring-Hall-Marvin Safe Company?

A. No, sir, not as I have seen.

Q. Did they appear on the product of Hall's Safe & Lock Company, I mean the Ohio corporation?

A. They appeared on one out of every one hundred that we got.

Q. Do you know Mr. George Hamilton Brooks?

A. Yes, sir.

Q. He was formerly employed by you as a salesman?

A. Yes, sir.

398 Q. And he was employed by you as a salesman when you were doing business, you and Mr. Deane, as the Hall Safe and Lock Company of Chicago?

A. Yes, sir.

Q. Mr. Brooks has testified in substance as I read his testimony and as I recall it, that he had received general instructions from you and from Mr. Deane to represent to prospective or intending customers of yours, that the safes he was selling for you as your safes were the product of and you were the successors of the original Hall's Safe & Lock Co., and that he was directed by you, to make such representations and also directed by Mr. Deane to make such representations,—state whether or not you ever gave him any such directions and if no, state what directions, if any, you did give him on that subject?

A. I never gave any specific directions to Mr. Brooks about disposing of our products; we never told him to represent that we were the successors of Hall's Safe & Lock Co. of Cincinnati, or that we ever had any connection with them, nor as their agents, because Mr. Brooks knew full well that we did not represent Hall's Safe & Lock Co. of Cincinnati,——

Mr. ALDRICH: The answer is objected to from "because."

Mr. MERRICK: Leave out the "because" and state whether or not—state any directions you gave him, if any.

A. We told him—Mr. Brooks to sell the safes, which he fully understood——

Mr. ALDRICH: Objected to.

Mr. MERRICK: Never mind what he thought or understood, what did you, Donnell, tell Brooks, about representing your product, or your company as being the successor of the original Hall's Safe & Lock Co. of Cincinnati.

A. We never told him we were the successors of Hall's Safe & Lock Co. of Cincinnati, Ohio; that is absolutely false——

Mr. ALDRICH: The question I submit is not what you told him you were, but what you told him to tell others; now go right on as it is entirely pertinent and proper and tell what you told him to tell others; I object to statements of who you were successors to as that is not rebuttal and has been fully gone into on the original and cross-examinations.

A. I could not say that we gave Mr. Brooks any explicit instructions about selling safes as he already knew what position we occupied with the Halls, and knew what they were selling, and knew——

399 Mr. ALDRICH: I move to strike out all that that is said about what "he knew" and the witness reasoning on the subject.

A. He had our catalogue, the catalogue representing the safes manufactured by The Hall Safe Company and he could not sell any other safes and represent them to be made by any other concern

than the safes that was represented in that catalogue; all the safes in that catalogue were marked "The Hall Safe Company" and all the safes that we had for sale were marked "The Hall Safe Company," unless it was some second-hand safes or very old product.

Q. Mr. Donnell, Mr. Brooks was asked by Mr. Aldrich on his examination in chief, whether, in canvassing for the product sold by your company here in Chicago, you gave him any instructions, to which he replied, you did; he was then asked to go ahead and tell what the instructions were and Mr. Brooks said that the instructions in a general way, were to the effect, gave him to understand—to give the general impression that it (referring to your company in Chicago) was the Hall's Safe & Lock Company, that is, that it was the original Hall's Safe & Lock Company, and that these instructions were given him by Mr. Deane and Mr. Donnell,—is that or is that not the fact?

A. It is not a fact.

Q. Did you ever in substance give him any instructions to that effect in any way?

A. No, sir; in no manner shape nor form.

Q. Have you ever advertised the Hall Safe and Lock Company of Chicago, either on the product sold by you, or in your advertisements, or in the newspapers, or elsewhere, that the Hall Safe and Lock Company of Chicago was the successor of the original Hall's Safe & Lock Co. of Cincinnati, Ohio?

A. No, sir; never.

Q. Did you ever hear Mr. Deane give any such instructions to any employee of yours, or salesman of yours?

A. No, sir.

Q. Did Mr. Deane ever tell you in any conversation with Mr. Deane prior to his decease, that he had ever given any such instructions?

Mr. ALDRICH: I object to the question as incompetent and immaterial.

Cross-examination by Mr. ALDRICH:

Q. At what date did Mr. Trumbull go into business?

A. I could not tell you exactly; I think it was in March, February or March in '98.

400 Q. At what date was the sale to Mr. Meade?

A. It was in February during the time he was custodian; I could not give the date exactly; it was in February.

Q. 1898?

A. Yes, sir. Sold him a National safe.

Q. The safe that Mr. Trumbull handled when he did go into business?

A. I think he had already been manager for them while he was custodian for us in there; I have understood so, but I did not know it to be a fact.

Q. I understand that the Hall's Safe & Lock Co. of Cincinnati, did put the words "Standard Safes," according to your tetsimony, upon some of the safes manufactured by it prior to its sale to the con-

solidated company, but that such use of the words ceased after such consolidation, is that the way you want to be understood?

A. Why, I could not say when they commenced or when they stopped using them; some of the safes as I say, were marked "Hall's Standard Safes" that we got, but very few; those they sent us were generally shipped on hurried orders, but were usually made for New York, but when they commenced putting "Hall's Standard Safes" on, it must have been probably a couple of years before the consolidation and after Herring-Hall-Marvin Company went into effect, they never put on "Standard Safes," only the word "Hall." They never put "Hall's Standard Safes" on any safes that we got, and they cannot find any here in Chicago with it on,—I can't.

Q. Now with reference to your instructions to Brooks, isn't it a fact that at the time Mr. Brooks was at work for you, you did seek and desired your agents to seek to give the buying public to understand that it was the original Hall's Safes that you were selling?

A. No, sir.

Q. Isn't it a fact that you sought to so conduct your business, that the buying public would not learn that it was not the original Hall's safes you were selling?

A. No, sir.

Q. In other words, you want to be understood upon this record, that you took pains to let the public know that you were not selling the original Hall's safes?

A. We had to do it on account of our competitors.

Q. All the time, and I understand you to say that you continued to take such pains from that time to the present time?

A. We were forced to by our competitors.

Q. I want a direct answer,—do you take pains to give intending purchaser to understand that you are not selling the original Hall's safes?

A. Sometimes we do.

401 Q. Sometimes you don't.

A. It depends upon the man, the customer; we sometimes do not care to say anything more than we have to; it is not necessary.

Q. The tendency on the part of yourself and your agents is to say no more on that subject than necessary, isn't that so?

A. No, sir.

Q. What is the truth?

A. Our agents always represented that we were doing business for the new concern, the Halls Safe Company of Cincinnati, stating that their goods, our goods,—were far superior to the old goods manufactured by the old Hall's Safe & Lock Co. and that they were organized under a new corporate name and had new machinery and factory, and everything else new, and when it was necessary they would always say that the old manufacture was sold by the Herring-Hall-Marvin Company; in fact, it was an argument in favor of the new Hall safes.

Q. But the purport of the argument was, that the Hall's safes were manufactured by the people who were in the original Hall's

Safe & Lock Co. with the new machinery and new methods, isn't that so?

A. No, sir; we never used the old Hall's Safe & Lock Co. they had a black eye in this section of the country as I testified before, their reputation was bad and in fact all of the old class of work was bad, so that we were glad to get a new name to represent.

Q. But you were glad also to keep the Hall name before the public?

A. Not necessarily.

Q. I notice that you did keep it before the public in the adoption of your own corporate name.

A. Yes.

Q. I notice also that even as you have given your instructions to your agents and as you have described your methods of sale, you keep the name "Hall" before the intending purchaser?

A. Yes.

Q. Your original bill advises me that the name "Hall" had acquired a great value?

A. Yes, sir. We made a great reputation for it here; and in this vicinity,—a large reputation for it here.

Q. I take it the manufactory at Cincinnati, helped you to make a big reputation by the character of the safes?

A. It wasn't all their goods that made such a large reputation in Chicago.

Q. Let me concede Mr. Donnell, that it was their goods partly and partly the ability and energy of A. L. Deane & Company, the fact is that the Hall name, as your bill stated, had acquired a great reputation in this locality?

402 A. Yes, sir, it has so now; we made our reputation by the work we have been selling for the past six years; that work consists of our patent rail linings, our electric linings and insulated vault doors, which the Hall Safe Company make for us.

Q. You would put emphasis upon your patent rail linings and your insulated vault doors and your electric vault linings, if you called your safes "Jones" safes, or "Smith's" safes, co-ldn't you?

A. That all goes in with the business.

Q. At the time you adopted the name Hall Safe and Lock Company for your corporation, these elements which you have named as elements of the safes manufactured by the Hall Safe Company of Cincinnati, were not known in this locality, were they?

A. No, but the elements of A. L. Deane & Company, that they had employed in the safe business here were well known,—which is our electric linings and our insulated goods, those were beginning to get a great reputation at that time and have since become quite a factor in the safe business.

Q. I notice that you still take great pains to keep the word "Hall" prominently before the public, in the changes which you have made on your place of business since the entry of the decree, the interlocutory decree in this case, that is so, is it not?

A. We did not want to have it changed any more than we had to; we just rubbed out the name "Safe and Lock" and put company on, as the change would cost us less that way.

Q. That is your explanation, Mr. Donnell?
A. Yes, that is all.
Q. I hand you a photograph of your place of business as it has been changed since the entry of the decree, and ask you if it is a correct representation of said changes?
A. Yes, sir.

The photograph is introduced in evidence and marked "Cross-complainants' Exhibit One of January 31st, 1905."

Q. Why did you keep the name "Hall" so prominently on you store front Mr. Donnell? since the entry of the decree and as shown by the photograph?
A. Simply because we are the agents of The Hall Safe Company's safes.
Q. Were you advised by any one that that was in compliance in good faith with the decree of the court?
A. Yes, sir.
Q. By whom?
A. By my attorney.
Q. By Mr. Merrick?
A. Yes.
403 Q. The fact is, Mr. Donnell, that you have been doing business since the entry of that decree in the name of The Hall Safe and Lock Company, is it not?
A. No, sir.
Q. I wish you would think well of that?
A. We have not.
Q. On January 7th, 1905, the purchasing agent of the Rock Island Railroad sent a communication to you, to the Hall's Safe & Lock Company, 52 Wabash Avenue, Chicago, you receive- that communication?
A. Yes, sir.
Q. You received it personally?
A. Yes, sir.
Q. You answered it personally?
A. That I could not say; the safe was sold by 'phone and the order came in a couple of days afterwards addressed to the Hall Safe & Lock Company.
Q. Who sent the cut of the banker's chest that was sent to it, to the purchasing agent?
A. That was done some time ago; I had it sent some time since. I could not say who done that.
Q. Is it not a fact, Mr. Donnell, that it was sent after the 12th day of January, 1905?
A. No, sir, it was sent before that; we haven't had time to change all of the cuts yet. I think that one was changed before the 12th of January.
Q. I am advised, Mr. Donnell, and want to be fair with you because I am going to make an issue with you on this subject, that they sent this communication to you on January 11th, that it was received by you on the 12th; that you sent a cut of the banker's

chest on which was printed, "Hall's Safes, Cincinnati," on that day, is that true or otherwise?

A. I could not say what date it was, I do not remember; it was after their request by—some one came over and looked at the safe a month ago and they got the cuts then; that was in December, we gave them the cut of the safes then,—one of my salesmen I think it was my son.

Q. No matter what you gave them then, is it not a fact that upon the receipt of this inquiry dated January 11th, cuts were sent on January 12th to them?

A. Not that I know of, I do not remember.

Q. And is it not a fact Mr. Donnell, that the cut of the banker's chest had on it these words, "Hall's safes, Cincinnati," and on the photograph containing these words, there was likewise printed, "Chicago branch of the Hall's Safe & Lock Company," state whether or not those are the facts or not?

A. I do not know; I never saw it that way at all; if they were that was I never saw it.

404 Q. Who has charge of such things in your business?

A. Usually my son; I was ill a great portion of the time this month.

Q. Did you have a new photograph taken of this so-called banker's safes, to send to Mr. Forbes or Mr. McCarty?

A. That photograph was taken three or four months ago, if not six months ago.

Q. How do you know it was?

A. That was the last order given; the original photograph was taken a year ago.

Q. Who gave the order?

A. That I could not say, the head bookkeeper perhaps.

Q. To whom was the order given.

A. We have several photographers who get out our work.

Q. Strange you are so indefinite?

A. No, it isn't; we have so many different photographs that it is impossibe to keep track,—to tell which one did it.

Q. Did they all have the same language on?

A. I don't know whether the name of "Hall's Safe & Lock Company" appears on it or not. I know the name of Hall's Safe Company of Cincinnati wasn't because it was made by York; the safe was not lettered "Hall's Safe & Lock Company, when it was sent at that time; as to the photograph I could not say.

Q. Have a good many of those photographs?

A. I don't think we have any. We were looking for some the other day. We have been trying to eradicate the name wherever it came and I was afraid some of my men would get me into trouble; we are trying to comply with the decree.

Q. If I have understood your testimony, Mr. Donnell, with reference to your conduct of your business and your instructions to agents, it is to the effect that prior to the institution of your suit at all times and subsequent thereto, you have sought to differentiate clearly the fact that you were selling Hall's Safe Company safes of Cincinnati and not the safes of the Hall's Safe & Lock Company of Cincinnati,

or the successors of that company, and that in no way have you sought to induce intending purchasers,—in the minds of intending purchasers, the belief that you were selling the product of the old Company, or had any relations with the old company,—I have correctly stated your testimony have I not?

A. Yes, sir; partially so; we never make an effort to tell people something we do not have to; we never make an effort to tell them we are not the original Hall's Safe & Lock Company, unless we are asked.

405 Q. But you do mean to be undersood as saying when asked and confronted with a question which required an answer, you have overcome the temptation to make a sale and told the literal truth?

A. Always, yes, sir.

Q. Why didn't you do it on your advertisements?

A. We always did as near as we knew *gow*.

Q. Why did you use on this particular photograph which you sent to the Rock Island Railroad Company on January 12, 1905, why did you say "Hall's Safes, Cincinnati" instead of the Hall Safe Company, Cincinnati.

A. I don't know, if it was used; it was a mistake and was not done under my instruction; it would be foolish to do it. I made the sale of that safe myself and I never gave them such a photograph and I do not think one can be produced; it was through the carelessness of a clerk if it was done, but I don't think there is one of the photographs over there.

Q. Well, "Hall's Safes, Cincinnati," if I am to believe the averments of the bill, would have meant the product of the old original Hall's Safe & Lock Company?

A. "Hall's Safes, Cincinnati?"

Q. Just "Hall's Safes, Cincinnati."

A. Not now days it would not; I should not think it would mean anything but The Hall Safe Company; it would mean the Hall Safe Company because they are the only Halls at Cincinnati now.

Q. Well, I wish you would explain what you mean by the "Chicago Branch of Hall's Safe & Lock Company."

A. I don't understand, I never used that; the Chicago branch of Hall's Safe & Lock Co. never used that through any suggestion of mine because it would be superfluous; there is nothing to it at all.

Q. Now, Mr. Donnell, isn't it a fact that the letter sent on January 11th or 12th, was signed the Hall Safe and Lock Company, by you, in your own handwriting?

A. If it was, it was before the court decision.

Q. I am talking about January 11th or 12th of this year.

A. I could not say as to that; I don't remember; I can look it up and let you know; we didn't use the name of Hall's Safe and Lock Company since the entry of the decree, when was that——

Q. Isn't it a fact that the cut of the burglary proof safe you sent to the Rock Island people is similar to No. 44 of the Herring-Hall-Marvin Safe Company?

A. I could not say what the Herring-Hall-Marvin Safe
406 Company's No. 44 is; I am not acquainted with their sizes. We do not sell that company's safes; it was a Hall safe we sold them because he liked the mechanism.

Q. Whom did you meet in that connection?

A. I could not tell you his name.

Q. It was Mr. McCarthy, was he not assistant purchasing agent to Mr. Forbes?

A. I never met Mr. Forbes in my life; I could not tell you the gentleman who came over although I have known his face for some time. I don't think he will tell you that we represented any one other than the Hall Safe Company or that we had any connection with the Hall's Safe & Lock Co. Nothing was said as to the manufacture of the safe.

Q. How long would it take you to go to your store and bring a copy of that letter, Mr. Donnell?

A. About ten minutes.

Q. I will ask you to do that before I conclude my cross-examination; I will ask you to do that now, and I want you to get one of those photographs.

A. I don't think I have one.

(Mr. Donnell goes to his store during fifteen minutes recess.)

A. Let the record show, pursuant to the request of counsel, I produce Letters of January 7, 1905, addressed to S. F. Forbes, purchasing agent, Chicago, Rock Island & Pac. R'y Co., Chicago, and signed The Donnell Safe Co. by Charles A. Donnell, and letter dated January 14, 1905, addressed to the same person signed The Donnell Safe Co. Agt., and state that these are the only written communications to the Chicago, Rock Island and Pacific R'y Co. in the month of January; that cut was given over six weeks ago and no writing was on it when it was given.

(These letters are marked "cross-complainant's Exhibits Two and Three of January 31, 1905, and the same are as follows:)

407 CROSS-COMPLAINANT'S EXHIBIT TWO—LETTER OF JAN. 7 1905.

All Safes made by Hall's [Vignette] Safe Co. Have this Trade Mark.

Donnell Safe Co.
(Incorporated.)
General Agents for
The Hall's Safe Co.'s Safes
Vault and Safe Deposit Work
52 & 54 Wabash Ave.

Telephones
Central 4517
Automatic 6768

CHICAGO, *Jan. 7th,* 1905.

Copy.

S. F. Forbes, Pur. Agt., C. R. I. & P. R'y Co., Chicago.

DEAR SIR: As per our conversation to-day, we beg to state that we can furnish one burglar proof safe which we have submitted cut of.

This safe is 42″ high, 28″ wide and 26″ deep. The outside door is 4″ thick made of 5 ply drill-proof Chrome steel and Bessemer steel. The outside plate of this door is 2″ thick, giving it ten times the tensil- strength of the 1″ plates. The door is secured by triple Sargent & Greenleaf Time Lock and Automatic device. On the inside of this safe there is a chest which has a 1½″ door, composed of the same material as the outside door, secured with a 4-tumbler combination lock. Above this chest there is a ½″ steel chest secured with a combination lock.

We will deliver this safe for the sum of Nine Hundred Dollars ($900.00) in Chicago. We consider this safe superior to any other safe of its character in the market. We have put a number of these safes in here in Chicago of this character lately. We have this safe on hand, and can ship immediately, if ordered at the present time.

Trusting we may be able to receive your order, we remain,

Yours very truly,

THE DONNELL SAFE CO.,

(Signed) CHAS. A. DONNELL.

Cross Complainants' Exhibit two of January 31/1905.

408 CROSS-COMPLAINANT'S EXHIBIT THREE—LETTER OF JAN. 14, 1905.

All Safes made by Hall's [Vignette] Safe Co. Have this Trade Mark.

Donnell Safe Co.
(Incorporated.)
General Agents for
The Hall's Safe Co.'s Safes
Vault and Safe Deposit Work
52 & 54 Wabash Ave.

Telephones
Central 4517
Automatic 6768

CHICAGO, *Jan.* 14*th,* 1905.

Copy.

S. F. Forbes, Pur. Agt., Chicago, Rock Island & Pacific R. R. Co., Chicago, Illinois.

DEAR SIR: We enclose you invoices for special burglar-proof safe which we have delivered to the La Salle St. Station to-day. The combinations and instructions for operating time lock and bolt actuating device, will be sent next week when the safe is put in the vault.

Yours very truly,

THE DONNELL SAFE CO.

(Signed) HAYDEN.

Cross-Complainants' Exhibit 3, of January 31 '05.

Q. I understand you to state Mr. Donnell that these letters are true copies of the only communications sent to Mr. Forbes during the month of January?

A. Yes, sir.

Q. Including the signatures?

A. Yes, sir.

Q. And that you sent no letters during that month signed Hall's Safe & Lock Company?

A. We have no record of it.

Q. You would have a record of you had sent such?

A. Yes, sir.

Q. So you would say that there was no such communication sent?

A. Yes, sir.

Q. That there was not?

A. That there was not.

Q. And you state also, as I have understood you, that the photograph or cut of the banker's chest, which you delivered to them, to Mr. Forbes, or his representative, was not delivered subsequent to January 11th or 12th, but some weeks prior thereto?

A. Yes, sir.

Q. And you likewise state that when it left your custody
409 or possession, it had no words printed thereon?

A. Yes, sir.

Q. No name on it at all of Hall's Safe & Lock Company?

A. We would have taken all those names off.

Q. You have taken them off?

A. We did when the court gave us twenty days to——

Q. Do I understand you to say that the cut of the banker's chest sent to Mr. Forbes was prior to the entry of the decree of the court?

A. Yes, sir.

Q. Well, at the time then, the court not having entered any decree on the subject, it might have had words printed thereon, might it not?

A. We gave them no cut at all this month, with the name "Hall's Safe and Lock Company" on it, unless it was the Hall Safe Company's safes, or we have several second hand ones,—we may have possibly furnished customers with these.

Q. Isn't it a fact that you did send them a cut that had the words, "Hall's Safes, Cincinnati," printed thereon?

A. No, sir.

Q. Isn't it a fact that you sent them or delivered them a cut that had the words "Chicago Branch of the Hall's Safe & Lock Company" printed thereon?

A. No, sir. We never had any cuts of that kind.

Redirect examination by Mr. MERRICK:

Q. Mr. Donnell, you testified on cross-examination here to-day concerning the manufacture and sale by you of electric vault linings and insulated vault linings, and I want to know of you whether or not any electric vaults or vault linings or insulated vaults or vault

linings were ever manufactured by the Hall's Safe & Lock Co. of Cincinnati?

A. No, sir.

Q. Are these electric vault linings and insulated vault linings, which you have testified to, linings of your own patent and construction?

A. Yes, sir; of Mr. Deane and myself.

Q. These electric vault linings and insulated vault linings, are what in their particular mechanisms?

A. They are linings that are made out of rails and are more secure than five ply Chrome steel linings that the safe men make?

Q. Are these linings designed to prevent burglaries by some electrical appliance?

A. Yes, you cannot burn through them or drill them without calling the alarm on the door; that alarm connects with the Police Station; they are a very popular construction with the bankers.

410 Q. You are interested and connected with another company called the Banker's Electric Protective Association?

A. Yes, sir.

Q. And you and Mr. Deane originated that company?

A. Yes, sir.

Q. This Bankers' Electric Protective Company manufacture an alarm device used in connection with safes and vaults, is that right?

A. Yes, sir.

Q. Now the use of that device by you was the subject of controversy between you and the Hall's Safe & Lock Co. of Cincinnati and the Herring-Hall-Marvin Company and others?

A. All the safe men—safe manufacturers were opposed to it.

Q. When you spoke of the reputation that your product acquired during these years that you were running as the Hall Safe and Lock Company of Chicago, you had in mind did you, or did you not, the combination of this electrical appliance with safes, vaults, vault linings, etc.?

A. We sold three times the banks in Chicago than any other manufacture, and this electrical device is in use in Chicago generally and in the West and other cities and throughout the Northwest.

Q. This device is not owned or used or controlled by safe manufacturies other than yourself?

A. No, sir; they are all bitterly opposed to it.

Q. As I understand you, when you speak of yourself as manufactury, you do not mean that you manufacture safes in the ordinary sense?

A. No, sir.

Q. You do manufacture vaults, vault boxes for safety deposit for bankers on specifications?

A. Yes, sir, a large number.

Q. In which you use these electrical appliances?

A. Yes, sir, we use these electric appliance- in large quantities.

Q. So that your Chicago company and its product in its dealings with the local trade here in Chicago had a reputation peculiar to itself, did it Mr. Donnell?

A. Yes, sir, and all throughout the Northwest.

Q. Which was independent of the Hall's Safe & Lock Company f Cincinnati, or the other Cincinnati Company now known as The Iall Safe Company?

A. Entirely independent.

Q. A large proportion of the volume of your business has been he installation of electric rail linings for vaults and insulated vaults nd doors, has it not?

A. Making electric linings, electric lined vaults and insu-11 lated doors and rail vault linings, that has been our principal business.

Q. In other words, you are not a mere distributor of the product f the Hall Safe Company of Cincinnati?

A. No, sir.

Q. And have not been since the organization of your company in 1898?

A. No, sir.

Q. Upon the entry of the decree, the interlocutory decree, under late I think it was of December 13, 1904, it was provided in that de-ree was it not, that it should become operative twenty days there-fter?

A. Yes, sir.

Q. Let me ask you whether or not it is not a fact that almost immediately upon the entry of that decree, you took steps to organize a corporation known as The Donnell Safe Company?

A. Yes, sir, we commenced the next day.

Q. You obtained such a charter?

A. Yes, sir.

Q. And have been doing business under it for practically a month?

A. Yes, sir, we commenced about the—shortly after Christmas, just as soon as we could get the ledger up.

Q. And you notified the public did you, that the Donnell Safe Company had succeeded to the Hall's Safe & Lock Company?

A. Yes, sir, sent out five or six——

Q. That that company had gone out of business?

A. Yes.

Q. And you have used the word "Donnell" in the conduct of your business ever since?

A. Every since, just as soon as we could get the stationery made.

Q. Yes, stationery of this character (referring to cross-complainants' Exhibits Two and Three of this date)?

A. Yes, sir.

Q. You testified in your cross-examination to-day that you had so done in compliance with the advice of your counsel in this case?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. It is a fact that I told you to comply with the order of the court, to organize this new company, and to cease using the name The Hall Safe and Lock Company?

A. Yes, sir.

Q. And you immediately thereupon had the sign Hall's Safe & Lock Company, where it appeared, taken off of your windows?

A. Yes, sir.

Q. And the Donnell Safe Company inserted therein?

A. Yes, sir.

Q. This sign of "Hall's Safes" appearing in large fancy letters over the door, is a picture of the old sign previously testified to by you and other witnesses, as being one of the signs originally
412 on the store of the original Hall's Safe & Lock Company's agencies in Chicago?

A. Yes, sir.

Q. When you were their agents in 1880 it was put there?

A. Yes, sir.

Q. And is the sign which you bought or took over with the chattels and goods at the time A. L. Deane & Co. purchased the stock of goods, horses, wagons and materials of the Hall's Safe & Lock Co., that is the same old sign?

A. Yes, sir.

Q. And been used by you continuously ever since?

A. Yes, sir. We didn't use it on Dearborn Street.

Q. I mean on Wabash Avenue?

A. Yes, ever since we have been down there.

Q. You did have at this place of business, 52 and 54 Wabash Avenue your corporation name, the Hall's Safe and Lock Company did you?

A. On the windows, yes, sir.

Q. In the place where the words "Co.'s" what was on there before this time?

A. "& Lock Company."

Q. And you have since put on in place of "Co.'s" and below the words "safes" in each instance, Donnell Safe Company, agents, and you use that on your stationery?

A. Yes, sir.

Q. And you are representing the Hall Safe Company's safes?

A. Yes, sir.

Q. And that is in accordance with the understanding and approval of the Hall Safe Company of Cincinnati?

A. Yes, sir.

Q. If it is a fact, or if it should subsequently appear to be a fact that the name Hall Safe & Lock Company has been used since the first of January, last, in correspondence, it has not been done with your knowledge?

A. No, sir, nor with my consent.

Q. And it has been inadvertently done in your absence, or by some employee not knowing the facts, that is what you mean to say.

A. Yes, I have been ill for three weeks.

Q. You are seeking and have sought since the entry of this decree or at least since the twenty days thereafter, to observe this decree?

A. Yes, sir.
Q. And you und-rstand it and are advised of what it means?
A. Yes, sir.

413 Recross-examination by Mr. ALDRICH:

Q. In the reputation of your business, referring particularly to your electric and rail devices, did not require the use of the word "Hall" did it?
A. We did not use the word "Hall" in connection with it.
Q. Such use was not required?
A. No, sir.
Q. Not necessary to the conduct of your business?
A. No, sir, only it was our corporate name.
Q. I understood you in your bill to say that the word "Hall," "Hall's Safes" had come to have a well known and accepted meaning?

Mr. MERRICK: I object to the question because it has been gone over so often that we ought not to repeat it.

A. Yes, it had in this territory.
Q. This sign which is shown on cross-complainants' Exhibit One, of this date, was designed to advise intending purchasers from 1880 to 1898, that the original Hall's Safes could be found at that place, was it not?
A. No, sir. It was always Hall's safes that we sold when that sign was up.
Q. And you always sold Hall's safes until about 1898?
A. Well, we sold from 1892 for about five years the safes made by the Herring-Hall-Marvin Company; they were then considered Hall's safes.

Redirect examination by Mr. MERRICK:

Q. I wish you would state, Mr. Donnell, whether or not is isn't a fact that other dealers than yourself, have for many years last past and are now advertising in the daily newspapers, safes substantially in the following language, "Hall's Safes" for sale, second hand Hall's safes for sale, inquire such and such a number"?
A. Yes, sir. That is almost a daily occurrence.
Q. Do you know, can you give me now from your recollection, the names of any such persons advertising that way.
A. Well, I saw an advertisement last week from Preston, the secondhand man over——
Q. What did he advertise?
A. He advertised second hand Hall's safes, and I see in a great many of the papers where they advertised Hall's Safes, Diebold safes, and naming the makers' names to identify the safes.
Q. So that it is a matter of common occurrence for advertisements to appear by dealers other than yourself, and that has been the case a great many years.

A. Yes, sir, that is the case.

414 Mr. ALDRICH: Everybody knows what they mean when they so advertise, do they not?

A. Yes, sir, I suppose so. They used to have a man here putting in Diebold's name of——

Mr. MERRICK: When safes are advertised as Hall's Safes is there anything in that advertisement to indicate whether they are the product of the original Hall's Safe & Lock Co.?

A. No, sir. Since the decision of the court we have been particular to state that we represent the Hall Safe Company.

Q. You have not advertised as the Hall Safe & Lock Company since this decree?

A. No, sir.

Q. You have advertised that you are the agents of the Hall Safe Company's safes?

A. Yes, sir.

Q. And nothing else?

A. No, sir.

WEDNESDAY, *February 1st*, 1902—2.30 o'clock p. m.

Parties met pursuant to adjournment.
Present: Mr. Merrick, Mr. Aldrich.

Testimony of George English.

GEORGE ENGLISH, a witness in behalf of Complainant, was recalled, examined in chief by Mr. Merrick and testified as follows:

Q. Mr. English, in your former examination I think that you testified that you went from Mr. Trumbull's place of business, that is from the Trumbull Safe & Vault Company directly into the employment of Mr. Donnell's company, the Hall Safe & Lock Company of Chicago, and I now want to inquire concerning the circumstances of your leaving him, in view of the testimony of Mr. Trumbull in this case, who testified in substance that you were discharged by Mr. Trumbull because of the fact of your inability to produce; that being his language. Will you state in your own way the circumstances of your leaving the Trumbull Safe & Vault Company?

Mr. ALDRICH: I object to that on the ground that it is immaterial and incompetent and leads us into the trial of a collateral issue, having no bearing upon the main matter in controversy.

415 Mr. MERRICK: I will withdraw the question, then, and ask you the question direct whether it is or is not true that you were discharged by Mr. Trumbull from the service of the Trumbull Safe & Vault Company.

Mr. ALDRICH: I object to that for the reasons heretofore stated.

Mr. MERRICK: Answer the question.

A. I was not discharged.

Q. Is it or is it not a fact that there was a disagreement between you concerning salary and commissions paid you?

Mr. ALDRICH: Same objection for the reasons heretofore stated.

Mr. MERRICK: Answer the question.

A. There was at first, but it was settled.

Q. While you were in the employment of Mr. Trumbull or the Trumbull Safe & Vault Company, did the character and reputation of Mr. Donnell become a topic of conversation between you?

Mr. ALDRICH: I object for the reasons heretofore stated.

A. Well, at times.

Q. State what, if anything, was said by Mr. Trumbull to you, with reference to Mr. Donnell wherein Mr. Donnell's reputation was involved, in your own language.

Mr. ALDRICH: To that I object for the reasons heretofore stated, and as not tending in any way to shed any light upon the issue in this case.

Mr. MERRICK: I will withdraw that question and ask you this question:

Q. Did you ever, on any occasion, discuss with Mr. Trumbull the character of Mr. Donnell?

A. Yes, sir.

Q. Did Mr. Trumbull, on that occasion or on any other occasion, or on more than one occasion refer to Mr. Donnell in an uncomplimentary way?

Mr. ALDRICH: To that I object as incompetent and immaterial and for the reasons heretofore stated.

A. Yes, sir.

Q. Please state when and where, if more than once, how many times the subject was discussed and what Mr. Trumbull said.

Mr. ALDRICH: Same objection for the same reasons. Let it be understood that this objection extends to all interrogatories of this character so as not to encumber the record.

Mr. MERRICK: Go on, Mr. English.

416 A. Well, it was on numerous occasions. The language used was not fit for publication.

Q. I want you to state it whether it is or not.

A. You want I should——

Q. State the exact language.

A. Well, for instance, when Mr. Donnell was passing by on the north side of Lake street, right opposite and in front of Trumbull's store, on the other side of the street, he said once when he was passing: "There goes the little black bastard." You wouldn't think that, but it is facts.

Q. What else did he say?

A. He said: "The son of a bitch."

Q. On how many occasions was that remark made by Mr. Trumbull?

A. There never was a time that I was there in that store that Mr. Donnell passed but that there was a remark similar to that made. Now, as to how many—that was five years ago—I can't remember.

Q. Was there anything said on any of those occasions with reference to whether or not Mr. Donnell was a thief or a damn thief or the like?

A. Yes, sir.

Q. State that language.

A. He said he was a damn robber and he was a damn thief.

Q. And you say that occurred on several occasions at the time that Mr. Donnell passed by the place of business of Trumbull on Lake street in Chicago?

A. Yes, sir.

Q. Was Mr. Donnell within hearing?

A. No, sir.

Q. On which side of the street was he with reference to Trumbull's store?

A. On the north side of the street.

Q. And Trumbull was on the south side of the street?

A. Trumbull was on the south side.

Q. He was observed passing by you and Trumbull?

A. Yes, sir.

Q. When Donnell was passing on the opposite side of the street from the store?

A. Yes, sir.

Q. How long prior to your going with Mr. Donnell or with his company did those conversations take place?

A. Well, I was with Mr. Trumbull but a few months before I went over to Mr. Donnell.

Q. I think you testified you were with him less than nine months all told?

A. Yes, sir.

Q. At the time that these remarks were made by Mr. Trumbull did you know Mr. Donnell?

A. Not personally, no, sir.

Q. Now, will you state a little more in detail the language, as nearly as you can recall it, that Mr. Trumbull used; what
417 he said and what, if anything, you said on the subject?

A. I was unable to say anything because I didn't know anything about the conditions or any reason why this language should be used. I was employed by Trumbull, but whenever this man Donnell would pass there was always remarks of that kind made, always a something.

Q. And for how long a period of time did he indulge himself in those remarks?

A. Well, I can't tell.—Whenever he would see him pass and he happened to be in the store there was always remarks of that description about him.

Cross-examination by Mr. ALDRICH:

Q. Where was the Trumbull store located?
A. I think the number is 117 Lake street.
Q. On a level with the sidewalk?
A. Yes, sir.
Q. What was the width and length of the store?
A. That I don't know; I think in keeping with the balance of the frontage on Lake street.
Q. About 20 or 25 feet?
A. About 20 or 25 feet, I think.
Q. And extending back how far?
A. Clear to the alley.
Q. That is a long store?
A. Yes, a deep store.
Q. Where were the offices in the Trumbull store at that time?
A. At the front part of the store.
Q. Getting light from the windows?
A. Getting light, and they could see what passed by in the front.
Q. What were your duties with the Trumbull people?
A. I was supposed to be a salesman.
Q. Remaining in the office to wait on customers or were you out hunting for customers?
A. Both.
Q. What proportion of the time were you in?
A. Well, I was out more than I was in. If I would have an appointment with a person I should make it my business to be at the store, and if he didn't come for a half or three-quarters of an hour, I felt it my duty to wait.
Q. Who else was in the office?
A. At what time, all the time?
Q. Yes, during this period?
A. Why, his partner, Mr. Hoffman.
Q. How were their desks arranged with reference to the front window?
A. They were side by side, that is as nearly as could be; Trumbull's desk nearer Lake street and Hoffman's right next to it.
418 Q. Face or back to the window?
A. Well, the desks faced east; the back was towards the west. There would be an end that faced to the north.
Q. And the windows would be, then, at the left hand of Mr. Trumbull?
A. Sitting at his desk, yes, sir.
Q. Both desks faced east?
A. Yes, sir.
Q. Who else was in the office, what clerks or other employees?
A. I don't know that they had any clerks.
Q. Did they have any other salesman besides yourself?
A. No, sir, not that I know of.
Q. Where was your desk in there?
A. I didn't have any desk.

Q. Where was your chair?
A. I would take Hoffman's chair.
Q. That is, when Hoffman was out?
A. Yes.
Q. Where were you when you heard these conversations?
A. Standing right there between both of them, between those two desks.
Q. So that if Mr. Trumbull was in the habit of indulging in language of the character you have repeated whenever he saw Mr. Donnell, Mr. Hoffman must have heard it likewise?
A. If he was there.
Q. I believe you have said that he was there.
A. Not all the time. You asked me where Hoffman's desk was, where Trumbull's desk was and where I was.
Q. We will be definite.
A. Yes, sir.
Q. Was Mr. Hoffman out?
A. Some times.
Q. Well, how often?
A. That I can't tell.
Q. Have you any recollection of Mr. Hoffman being out at any time when Mr. Trumbull used the language you have stated?
A. Well, I will set matters right and you will see that I am not trying to get around this: Coming in there, you asked me where my desk is; I said I had no desk. Now, if Mr. Hoffman was out and I had business at the desk, I would sit down at his desk. If I got to talking to Mr. Hoffman and Mr. Trumbull wasn't there, or *visa versa*, you can see my position. I came in when I had business; I went out to get business when I had nothing inside.
Q. I think I understand you, but what I am desiring to elicit from you is whether or not on all these occasions when Mr. Trumbull indulged in the language you have stated, Mr. Hoffman was out.
A. No, I won't say that he was out at all times. He was present many times when those remarks were made.
419 Q. And the desks were so situated with reference to each other that Mr. Hoffman must have heard the language?
A. I guess that is right.
Q. It is right, isn't it?
A. Yes, sir.
Q. Mr. English, Mr. Donnell testified here on yesterday, as I understood him, that during all of the time, prior to 1898 and subsequent thereto, there were other people, some of them safe dealers, as I understood him, and some of them not, who advertised in the papers, the daily press of Chicago, that they had second-hand Hall safes for sale. Have you frequently seen such advertisements in the papers?

Mr. MERRICK: I object for the reason that there has been no testimony elicited in chief from this witness which would warrant any cross-examination along the lines indicated by this question.

Mr. ALDRICH: You may answer the question.

A. Yes, sir.

Q. What did you understand such advertisements to mean?

Mr. MERRICK: Same objections, for the same reasons.

The WITNESS: Do you want I should answer?

Mr. ALDRICH: That is what I asked the question for.

A. How can I understand their meaning? I might infer that they had a Hall Safe that they wanted to sell.

Q. What did you infer?

A. If a man would advertise that he had a Hall safe I would infer that he had a Hall safe to sell.

Q. What would you understand he meant by "Hall safe?"

Mr. MERRICK: That is objected to for the reasons stated before. It will be understood that all questions along this line are objected to as not cross-examination.

(Question read as follows: What would you understand he meant by "Hall's safe?")

A. A safe made my the Halls.

Q. Do you mean the Hall boys of Cincinnati or the old Hall's safes?

A. Well, you are going back again. It would be a Hall safe if it was made by the Hall boys of Cincinnati.

Q. You want to be understood, then, as saying that if you saw such advertisement in a daily paper, you would infer by going to the place designated you would see a safe made by the Hall boys of Cincinnati, the present Hall Safe Company?

A. Well, I don't know that you can put that construction to it. I will explain in my way: If I were to see an advertisement of that kind, a Hall safe for sale, I would want to see the safe. Then I would know what it was.

420 Q. Prior to 1898 you wouldn't have any doubt, would you?

A. Just as much doubt as I would have now.

Q. How long prior?

A. That I don't know. I am not an old safe man.

Q. The Hall boys had not been in business very long in 1898, had they?

A. They were in business when I went to work for Donnell.

Q. When was that?

A. About five years ago.

Q. 1900?

A. You see, you bring me back to 1898.

Q. Isn't it a fact, Mr. English, that the term "Hall safe," as generally understood, refers to the old Hall safes and not to the product of the new Hall Safe Company of Cincinnati?

A. I can't agree with you, and if you will excuse me, I will tell you why: If that question ever comes up, where I am interested, in order to sell a man a safe, I never yet have failed to tell him that this is a product of the Cincinnati factory, made by Hall's boys; show

him my catalogue and show him the name on the safe, Hall Safe Company, Cincinnati.

Q. I am not asking you about your practice in selling, as I have formerly indicated to you upon that point; I am asking you what the term "Hall's safes," as used in such advertisements, is understood to mean.

A. It means the safes made by the Halls of Cincinnati.

Q. And not the old Hall Safe & Lock Company?

A. I don't know that I can—I was trying to say that to you—if I have ever been asked that question, I have told them what it is.

Q. I am not asking you what your practice is; I am asking you as to the meaning of that term as used in such advertisements.

A. Well, suppose that it was the Hall Safe & Lock Company safe that the man had to sell.

Q. It would be a Hall Safe, wouldn't it?

A. Yes, suppose it was a Hall safe; it would be a Hall safe, wouldn't it?

Q. Yes.

A. That is the position; that is what I say to you. I can't tell; I can't infer what an advertisement is until I see the article.

Q. So that such advertisements are confusing, are they not?

A. They are some times.

Q. One would need to go and make inquiries and look into the history of the product to be able to determine which was meant, wouldn't he?

A. Well, I will say that I think any practical man could tell what it was without going into history.

Q. Not until he had seen the product?

A. Not until he had seen it.

421 Q. And until then he would be confused and uncertain as to which was meant, would he not?

A. That I couldn't tell.

Q. You have said that you wouldn't know until you went to see, haven't you?

A. That is right.

Q. Well, the same difficulty that you admit applies to yourself you think would apply to other people generally, do you not?

A. It might and might not; I can't tell. For instance, I will cite a case to you: Suppose in this office Mr. Merrick had a Hall safe and you knew it was a Hall safe for sale and I didn't and he advertised a Hall safe; you get the paper and see Hall safe for sale; you know it; I wouldn't, because I hadn't seen it.

Q. It would be confusing to other people who hadn't seen it; that is the point, isn't it?

A. I don't know that I can answer that to your satisfaction. I can't tell. There are different kinds of people.

Q. Do it to your own satisfaction and state with reference to your own mind.

A. In my own mind I would want to see it.

Q. And until you had seen it you wouldn't know which was meant, would you?

A. I would have no means to know.

Mr. ALDRICH: That is all.

Mr. MERRICK: I move to strike out all the cross-questions and answers thereto touching any other matter than the answers elicited in chief, impeaching or tending to impeach the testimony of Mr. Donnell.

Redirect examination by Mr. MERRICK:

Q. The conversation- you have related between you and Mr. Trumbull relating to the character of Mr. Donnell were conversations between you and Mr. Trumbull alone in some instances, as I understand you, and in some instances when Mr. Hoffman was present?

A. Yes, sir.

Mr. ALDRICH: I move to strike out all of the testimony elicited from the witness with reference to conversations or statements alleged to have been heard by Mr. English with reference to Mr. Donnell, as not pertinent to any issue in this case, and therefore incompetent and immaterial.

422 *Stipulation.*

It is hereby stipulated by and between the respective parties hereto that there was introduced in evidence before the special master, upon the motion and cross motion of both parties herein for temporary injunction, a certain certified copy of the record of a case lately pending in the United States Circuit Court for the Southern District of Ohio, wherein the Herring-Hall-Marvin Company was complainant and the Hall Safe Company, defendant, which record showed the bill, date of filing and the orders and other pleadings following the filing of said bill, and that such certified copy so filed with the clerk of this Court may be understood to be offered in evidence as a part of the record herein with as full force and effect as if said copy had been originally introduced in evidence upon the hearing of the merits, and that said certified copy so filed as aforesaid may be incorporated in the certificate of evidence herein.

Adjourned subject to notice.

Certificate of Notary.

STATE OF ILLINOIS, *County of Cook, ss:*

I, George W. Burgoyne, a notary public in and for the County of Cook and State of Illinois, the Examiner referred to in the foregoing certificate of evidence, appointed as such by agreement of counsel, hereby certify that the annexed transcript of testimony and exhibits, consisting of 624 pages, numbered from 1 to 624, inclusive, is a true copy of all the testimony taken by all the parties in the above entitled cause, and that the copies of exhibits in said certificate of evidence shown are true copies of the original exhibits offered in evidence on the hearing before me.

In Testimony Whereof I have hereunto set my hand and seal this 6th day of June, A. D. 1905.

GEORGE W. BURGOYNE,
[SEAL.] *Notary Public.*

423 *Certificate of Judge.*

The Foregoing transcript of evidence, as certified by the examiner, contains all the evidence offered on the hearing of Hall Safe & Lock Company, Complainant, *vs.* Herring-Hall-Marvin Company, Respondent, and Herring-Hall-Marvin Company, Cross-Complainant, *vs.* Hall-Safe & Lock Company, defendant; and inasmuch as the matters above set forth do not fully appear of record in this suit, the Cross-defendants tender this certificate of evidence and pray that the same may be certified under the hand and seal of the Judge of this Court, and thereby made a part of the record in such case, and it is certified accordingly this 8th day of June, A. D. 1905.

S. H. B., *Judge.* [SEAL.]

O. K.
ALDRICH & McAULEY.

(Endorsed:) Filed June 8, 1905. Marshall E. Sampsell, Clerk.

And on to-wit: the first day of June, 1905, came Hall Safe and Lock Company and James W. Donnell, cross-defendants herein by their solicitors and filed in the clerk's office of said court in said entitled cause their certain Petition for Appeal in words and figures following to-wit:

424 *Petition for Appeal.*

Filed June 1, 1905.

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Bill. No. 27294.

HALL SAFE AND LOCK COMPANY, Complainant,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Defendant.

Cross-bill.

HERRING-HALL-MARVIN SAFE COMPANY, Cross-Complainant,
vs.
HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Cross-Defendants.

Petition for Appeal.

Now come the above named Hall Safe and Lock Company and James W. Donnell, cross-defendants, and respectfully represent that

in the record and proceedings in a certain cause lately depending in the said Circuit Court of the United States for the Northern District of Illinois—Eastern Division, wherein these petitioners were cross-defendants and the Herring-Hall-Marvin Safe Company was cross-complainant, and in the decree therein against these petitioners manifest errors have intervened to the great injury of the petitioners as more particularly appears by an assignment of errors filed herein.

Therefore, petitioners respectfully pray that an appeal may be allowed herein to bring before the United States Circuit Court of Appeals for the Seventh Circuit the record of the proceedings and the decree aforesaid and that the same may be by that court inspected and examined and said decree reversed and the errors complained of corrected according to law;

And that pending the appeal herein prayed the injunction
425 therein commanded, be and the same is stayed and held in abeyance until the further order of this Court.

Respectfully submitted,

GEORGE P. MERRICK,
AZEL F. HATCH,
Solicitors for Petitioners.

(Endorsed:) Filed June 1, 1905, Marshall E. Sampsell, Clerk.

And on the same day to-wit: the first day of June, 1905, came Hall Safe & Lock Company and James W. Donnell, by their Solicitors and filed in the clerk's office of said Court in said entitled cause their certain assignment of errors in words and figures following to-wit:

Assignment of Errors.

Filed June 1, 1905.

Assignment of Errors.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Bill. No. 27294.

HALL SAFE AND LOCK COMPANY, Complainant,

vs.

HERRING-HALL-MARVIN SAFE COMPANY, Defendant.

Cross-bill.

HERRING-HALL-MARVIN SAFE COMPANY, Cross-Complainant,

vs.

HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Cross-Defendants.

Assignment of Errors.

And now come the above named Hall Safe and Lock Company and James W. Donnell, petitioners herein, and assign error herein among other things:—

First. That the said Circuit Court of the United States for
426 the Northern District of Illinois, Eastern Division, erred in the hearing hereof in finding the issues herein, in favor of Herring-Hall-Marvin Safe Company, cross-complainant, and against the petitioners, Hall Safe and Lock Company and James W. Donnell, cross-defendants.

Second. That the said Circuit Court also erred in enjoining said cross-defendants, Hall Safe and Lock Company and James W. Donnell, its and their successors, assigns, servants, agents and employés of every name and description whatsoever, from carrying on the safe and vault business in any name of which the name "Hall" is a part.

Third. That the said Circuit Court also erred on the hearing hereof, in enjoining said cross-defendants Hall Safe and Lock Company and James W. Donnell from marking their safes with any name of which the word "Hall" is a part and from advertising or offering safes or vaults for sale as "Hall's safes" or by any name which the word "Hall" is a part, except and unless the safes so offered shall have actually been made and manufactured by the original Hall's Safe & Lock Co. of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company, cross-complainant.

Fourth. That the said Circuit Court also erred on the hearing hereof in referring said cause to the Master in Chancery with directions to take account of the profits accruing to the said Hall Safe and Lock Company, an Illinois corporation, and James W. Donnell, cross-defendants growing out of the alleged unauthorized and unwarranted use of said name, with directions to report his conclusions thereon to said Circuit Court.

Fifth. That the said Circuit Court also erred on the hearing hereof in entering the decree herein entered.

Therefore, the said Hall Safe and Lock Company and James W. Donnell, petitioners and appellants, pray that for the errors above assigned, said decree of the Circuit Court of the United States for the Northern District of Illinois may be reversed, annulled and for nothing esteemed and that this cause may be remanded to the said Circuit Court with proper directions to that court in the premises.

GEORGE P. MERRICK,
AZEL F. HATCH,
Solicitors for Hall Safe and Lock Company and James W. Donnell, Appellants.

(Endorsed:) Filed June 1st, 1905. Marshall E. Sampsell, Clerk.

427 And on the same day to wit: the first day of June, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to wit:

Order of June 1, 1905, Allowing Appeal.

Order of June 1, 1905, Allowing Appeal upon Filing Sufficient Bond.

Bill. 27294.

HALL SAFE AND LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE COMPANY.

Cross-bill.

HERRING-HALL-MARVIN SAFE COMPANY
vs.
HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL.

Now comes the cross-defendants, Hall Safe and Lock Company and James W. Donnell, by their solicitors and present their petition for appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the order and decree of this court this day entered herein decreeing the perpetual injunction in said decree contained and also file their assignments of error and the Court being fully advised in the premises,

It is Ordered by the Court that said appeal be allowed upon the cross-defendants filing a bond in the sum of $10,000 — thousand dollars, with security to be approved by the Court; and that pending the appeal herein that the injunction order in said decree contained be and the same is hereby stayed and held in abeyance until the further order of this court.

And it is further ordered that thirty (30) days are allowed said cross-defendants to present their certificate of evidence; and that said appeal bond in said penal sum as aforesaid be filed within ten days herefrom.

428 And on to wit: the eighth day of June, 1905, came the Hall Safe and Lock Company, a corporation and James W. Donnell, as principals and the American Bonding Company of Baltimore, as surety and filed in the clerk's office of said Court a certain — in words and figures following to wit:

Bond on Appeal.

Filed June 8, 1905.

Bond.

Know All Men by These Presents, That we, the Hall Safe and Lock Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and James W. Donnell, as principals, and the American Bonding Company of Baltimore, as

surety, are held and firmly bound unto Herring-Hall-Marvin Safe Company, a corporation of the State of New Jersey, in the full and just sum of ten thousand dollars ($10,000) to be paid said Herring-Hall-Marvin Safe Company, its certain attorney, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these Presents.

Sealed with our seals and dated this fifth day of June, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in a suit depending in said Court between said Hall Safe and Lock Company, complainant, and said Herring-Hall-Marvin Safe Company, defendant, and in the cross suit of Herring-Hall-Marvin Safe Company, cross-complainant and the Hall Safe and Lock Company and James W. Donnell, cross-defendants, a decree was rendered enjoining the said Hall Safe and Lock Company and James W. Donnell, cross-defendants, and the said Hall Safe and Lock Company and James W. Donnell having prayed and been allowed an appeal to the United States Court of Appeals for the Seventh Circuit to reverse the decree in the aforesaid suit, and a stay of injunction pending appeal.

Now, therefore, the condition of the above obligation is such that if the said Hall Safe and Lock Company and James W. Donnell shall prosecute their appeal to effect and answer all damages
429 and costs if they fail to make their plea good; then the above obligation to be void; else to remain in full force and effect.

THE HALL SAFE AND LOCK COMPANY,
[SEAL.] By JAMES W. DONNELL, *Its President.*
JAMES W. DONNELL. [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE,
By COLEY M. HAVEN, *Its Res. Vice President.*
[SEAL.]

Attest: GEORGE S. HASKELL,
Ass't Sec'y.

O. K.
ALDRICH & McAULEY.

Approved June 8, A. D. 1905.

S. H. B.

(Endorsed:) Filed June 8, 1905. Marshall E. Sampsell, Clerk.

And afterwards to wit: on the twelfth day of June, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of June 12, 1905.

27294.

HALL SAFE AND LOCK COMPANY
vs.
HERRING-HALL-MARVIN COMPANY.

HERRING-HALL-MARVIN COMPANY
vs.
HALL SAFE AND LOCK COMPANY.

Now come the parties hereto by their respective counsel and by agreement of said parties it is hereby Ordered,

That the original exhibits heretofore incorporated in the Certificate of Evidence herein may be withdrawn therefrom and together with all other exhibits heretofore filed herein, may be certified to the United States Circuit Court of Appeals for the Seventh Circuit, for its use on the hearing of this appeal.

430 *Præcipe for Record.*

Filed June 13, 1905.

Præcipe for Record.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Bill. No. 27294.

HALL SAFE AND LOCK COMPANY, Complainant,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Defendant.

Cross Bill.

HERRING-HALL-MARVIN SAFE COMPANY, Cross-Complainant,
vs.
HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Cross-Defendants.

Please prepare transcript of record in the above entitled cause on appeal to the United States Court of Appeals, inserting the following:—

(1) Bill of complaint filed June 28, 1904 in Superior Court of Cook County.
(2) Summons from said Court.
(3) Petition for removal to U. S. Court.
(4) Bond on removal.

(5) Order of Removal.
(6) Answer of defendant, Herring-Hall-Marvin Safe Co.
(7) Cross Bill of Herring-Hall-Marvin Safe Company, cross com
plainant.
(8) Answer of Hall Safe and Lock Company and James W
Donnell, cross defendants.
(9) Replication of Herring-Hall-Marvin Company to answer o
cross-defendants.
(10) Order of reference to Master July 12, 1904,
(11) Order of reference to Master July 15, 1904.
(12) Order on Master's report (October 24th, 1904)
(13) Interlocutory decree of December 13, 1904.
431 (14) Injunctional bond on Interlocutory decree December
23, 1904.
(15) Certificate of evidence.
(16) Decree.
(17) Petition for Appeal.
(18) Assignment of errors.
(19) Order allowing appeal.
(20) Appeal Bond.

GEORGE P. MERRICK,
Solicitor for Cross-defendants and Appellant.

(Endorsed:) Filed June 13, 1905, Marshall E. Sampsell, Clerk.

Certificate of Clerk.

NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with the Præcipe filed in the cause entitled Hall Safe and Lock Company, Complainant *vs.* Herring-Hall-Marvin Safe Company, defendant, Bill, General Number 27294 and Herring-Hall-Marvin Safe Company, Cross-Complainant *vs.* Hall Safe and Lock Company and James W. Donnell, Cross-defendants, Cross-Bill, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District this 29th day of June 1905.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

432 *Citation.*

Filed June 15, 1905.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Herring-Hall-Marvin Safe Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order allowing an Appeal entered and filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, wherein Hall Safe and Lock Company and James W. Donnell, are Appellants, and you are Appellee, to show cause, if any there be, why the Decree rendered against the said Appellants as in the said Petition mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Solomon H. Bethea, Judge of the District Court of the United States, this Eighth day of June, in the year of our Lord one thousand nine hundred and five.

SOLOMON H. BETHEA.

Service of this citation hereby accepted this 15th day of June A. D. 1905.

ALDRICH & McAULEY,
Sol'rs for Herring-Hall-Marvin Safe Co.

(Endorsed:) Gen. No. 27294 Circuit Court of the United States, Northern District of Illinois. Hall Safe and Lock Company *vs.* Herring-Hall-Marvin Co. Citation. Returnable July 8 1905 Marshall E. Sampsell Clerk. Circuit Court of the United States Northern District of Illinois—Eastern Division. Filed Jun- 15 1905 Marshall E. Sampsell, Clerk.

433 & 434 *Certificate of Clerk.*

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 432, inclusive, contain a true copy of the printed record filed in this Court on August 17, 1905, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this Court and upon which the cause was determined by the United States Circuit Court of Appeals for the Seventh Circuit in the case of Hall Safe & Lock Company and James W. Donnell *vs.* Herring-Hall-Marvin Safe

Company No. 1192, October Term, 1905, as the same remains up
the files and records of the United States Circuit Court of Appea
for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix t
seal of said United States Circuit Court of Appeals for the Seven
Circuit, at the City of Chicago, this 12th day of September, A.
1906.

[Seal United States Circuit Court of Appeals, Seventh Circui

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

435 At a regular term of the United States Circuit Court
Appeals for the Seventh Circuit, begun and held at the Unit
States Court Room in the City of Chicago in said Seventh Circuit
the fourth day of October, 1904, of the October term in the year
our Lord one thousand nine hundred and four and of our Ind
pendence the one hundred and twenty-ninth.

And afterwards, to-wit: On the eighteenth day of July, 1905, i
the October term last aforesaid, came the appellant by its couns
Mr. George P. Merrick and Mr. Azel F. Hatch, and filed in the offi
of the clerk of this court their appearance, which appearance is i
the words and figures following, to-wit:

Appearance for Appellant.

Filed July 18, 1905.

United States Circuit Court of Appeals for the Seventh Circuit
October Term, 1904.

No. 1192.

HALL SAFE & LOCK COMPANY and JAMES W. DONNELL, Appellant-
vs.
HERRING HALL MARVIN SAFE COMPANY, Appellee.

The Clerk will enter *my* appearance as Counsel for the appellant.

GEORGE P. MERRICK.
AZEL F. HATCH.

Endorsed: Filed Jul- 18, 1905. Edward M. Holloway, Clerk.

436 And afterwards, on the same day, to-wit: On the eighteenth
day of July, 1905, in the October term last aforesaid, came
the appellee, by its counsel, Mr. Charles H. Aldrich and Mr. Henry
S. McAuley, and filed in the office of the clerk of this court their
appearance, which appearance is in the words and figures following,
to-wit:

Appearance for Appellee.

Filed July 18, 1905.

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1904.

No. 1192.

HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Appellant-,
vs.
HERRING HALL MARVIN SAFE COMPANY, Appellee.

The clerk will enter our appearance as Counsel for the Appellee.
CHARLES H. ALDRICH.
HENRY S. McAULEY.

Endorsed: Filed Jul- 18, 1905. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the thirtieth day of August, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

437 *Stipulation.*

Filed Aug. 30, 1905.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1904.

Number 1192.

HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Appellants,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Appellee.

It is stipulated and agreed by and between counsel for the parties hereto that appellants may have fifteen (15) days from September 6th, 1905, within which to file appellants' brief and argument in the above entitled cause.

Chicago, August 30, 1905.

GEORGE P. MERRICK &
A. F. HATCH,
Counsel for Appellants.
ALDRICH & McAULEY,
Counsel for Appellee.

Endorsed: Filed Aug. 30, 1905. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Room in the City of Chicago in the said Seventh Circuit, on the third day of October, 1905, of the October term in the year of our Lord one thousand nine hundred and five and of our Independence the one hundred and thirtieth.

An afterwards to-wit: On the third day of October, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

438 *Order of Oct. 3, 1905.*

TUESDAY, *October* 3, 1905.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1192.

HALL SAFE & LOCK COMPANY
vs.
HERRING HALL MARVIN SAFE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that this cause, be, and the same is hereby set down for hearing November 3, 1905.

And afterwards, to-wit: On the tenth day of October, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

Stipulation.

Filed Oct. 10, 1905.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

1192.

HALL SAFE & LOCK COMPANY and JAMES W. DONNELL, Appellants,
vs.
HERRING-HALL-MARVIN SAFE COMPANY, Appellee.

It is hereby stipulated between the parties to the above entitled cause that the Appellee may have fifteen days from October 11, 1905, in which to file its brief.

GEO. P. MERRICK &
A. F. HATCH,
Counsel for Appellant.
ALDRICH & McAULEY,
Counsel for Appellee.

Endorsed: Filed Oct. 10, 1905. Edward M. Holloway, Clerk.

9 And afterwards, to-wit: On the third day of November, 1905, in the October term last aforesaid, the following fur-er proceedings were had and entered of record, to-wit:

Hearing No. 3, 1905.

FRIDAY, *November* 3, 1905.

Court met pursuant to adjournment.
Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1192.

HALL SAFE & LOCK COMPANY
vs.
HERRING-HALL-MARVIN SAFE COMPANY.

Appeal from the Circiut Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. George P. Merrick and Mr. O. W. Hatch, counsel for appellant, and by Mr. Lawrence Maxwell, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the 11th day of January, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the following words and figures to-wit:

440 *Opinion.*

Filed Jan. 11, 1906.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term and Session A. D. 1905.

No. 1192.

HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Appellants,
vs.
HERRING-HALL-MARVIN SAFE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Before Grosscup, Baker, and Seaman, Circuit Judges.

The appellant, Hall Safe and Lock Company, was the complainant below in a bill filed against the appellee, Herring-Hall-Marvin

Safe Company, to restrain the use of the name "Hall" in advertisements and otherwise, as descriptive of its business and of the safes manufactured and sold by the appellee. This appeal, however, is from a decree entered under a cross bill filed by the appellee for like relief against the appellants, which restrains Hall Safe and Lock Company and James W. Donnell "from carrying on the safe and vault business in the name of 'Hall Safe and Lock Company,' or any name of which the name 'Hall' is a part, and from marking their safes with any name of which the name 'Hall' is a part, or from advertising or from offering for sale safes or vaults as 'Hall's Safe,' or by any name of which the name 'Hall' is a part, except or unless the safe so offered shall have been made or manufactured by the original Hall Safe and Lock Company of Ohio, or its successors, The Herring-Hall-Marvin Company, the receivers thereof, or The Herring-Hall-Marvin Safe Company."

The original suit by the Hall Safe and Lock Company was commenced in the Superior Court of Cook County and was removed to the Circuit Court of the United States, the Herring-Hall-Marvin Safe Company, defendant therein, being a New Jersey corporation. The defendant answered the bill and with leave of court filed a cross bill, which made James W. Donnell, president of the complainant corporation, defendant therein. Upon issues joined, the cause
441 was referred to a special master on application of the respective parties for an injunction *pendente lite*. The master filed a report, and subsequently the Circuit Court denied the injunction prayed for in the original bill and dismissed the bill and entered an order restraining the complainants, therein, as cross defendants, from the use of the name "Hall's Safe and Lock Company" *pendente lite*. Proofs were subsequently taken on the issues under the cross bill and answers thereto, and upon hearing, the decree was entered which makes such injunction permanent, and from which the present appeal is brought.

The facts involved are many and complicated, but a statement of ultimate facts is deemed sufficient for the purposes of this opinion.

The origin of the business and manufacture of safes, which became known as "Hall's safes," is thus stated in the original bill filed by the appellant, Hall Safe and Lock Company, as follows:

"Your orator further represents that Hall's safes were first manufactured by Joseph L. Hall at or near Cincinnati, Ohio, on or about the year 1854 and that since said time said Joseph L. Hall, or his sons, either individually, or as managers of corporations in which the personal or family name of Hall appeared, have been engaged in the manufacture of safes and the name 'Hall' has by reason of such long business experience acquired and now enjoys the highest reputation in the safe business; that safes so manufactured and labeled are known to the trade and the public as safes of the highest type of construction, durability, efficiency, and character for the purposes for which safes are manufactured, to-wit, the preservation from fire and theft of money and personal property of great value."

The business was instituted by Joseph L. Hall in 1847, and was carried on successfully as a copartnership in which the name "Hall"

eared until 1867, when the parties organized under the name of
ll Safe and Lock Company at Cincinnati. Joseph L. Hall was the
naging member of the several partnerships and became principal
ner and president of the corporation, and so continued until his
th in 1889, and his executors were his widow and son and a son-
law. The business of that corporation was continued until 1892,
en it was sold to the Herring-Hall-Marvin Company, a New
rsey corporation, under an instrument conveying in the following
ms:

"all and singular its manufacturing plant, machinery,
2 tools, patterns, buildings, fixtures, leasehold interests, stock
of safes and other merchandise, material manufactured, in
anufacture and in process of manufacture, horses, wagons, vehicles,
rtage plant and rigging, bills receivable, book accounts, moneys,
bts, dues, books of accounts and other books, papers, office furni-
re, trade marks, patent rights, trade rights, good will and all its
operty and assets of every name and nature wheresoever situated,
the same exist at the time of the delivery of these presents."

Also the following: "It is hereby expressly understood, cove-
nted and agreed that the business of Hall's Safe and Lock Com-
ny is purchased and taken over by the parties of the second part in
l respects as a going concern."

The appellee, Herring-Hall-Marvin Safe Company, is the suc-
ssor in interest and title to the business, good will and all rights
erived through such conveyances.

Edward C. Hall and the other heirs of Joseph L. Hall participated
the sale referred to of the Hall's Safe and Lock Company and
ecame officers of the original purchasing company and so continued
ntil 1896, and the word "Hall" was retained and kept prominently
n use and view in the operations and product of the purchasing
ompany at all times subsequent to such purchase.

When the business was so purchased it was extensive, and the
"Hall Safes" and "Hall's Standard Safes" were extensively used
nd known in this country and abroad. Upon the sale of the Hall's
Safe and Lock Company's assets, the purchaser paid $600,000 in
ash and $700,000 in the capital stock of the purchasing company.
The then capital stock of the Hall's Safe and Lock Company was
$375,000, of which the Hall estate owned $320,000, and the Hall
nterest was controlling in the new company, embracing the offices
of president, treasurer and secretary. Other contracts of employ-
ment in the new company covenanted that they would not, while
their services were retained in that corporation, engage in Ohio or
New Jersey, or elsewhere east of the Mississippi, in the business of
manufacturing or dealing in vaults or safes, or any business such as
the Hall's Safe and Lock Company had theretofore carried on.

The Halls severed their connection with the purchasing corpora-
tion in 1896, and proceeded to organize the Hall Safe Company,
under the laws of Ohio, out of which litigation arose, and which is
now pending on appeal in the Circuit Court of Appeals for the Sixth
Circuit.

443 The Hall Safe Company of Ohio are engaged in the manufacture of safes, and their product was sold by the appellant, Hall Safe and Lock Company, of Illinois, until restrained by the injunctional order above mentioned. Since that time the business has been carried on under the name of "Donnell Safe Company," of which the appellant, James W. Donnell, is the principal constituent.

The appellant, Hall Safe and Lock Company, was organized in Chicago in 1898, to take over and continue the business of A. L. Dean & Company, when that firm became financially embarrassed. A. L. Dean & Company from 1886, up to the time of its failure, was the representative, successively, of the original Hall's Safe and Lock Company of Cincinnati and its successors in interest, including the appellee. The contracts of service of that firm covenanted that they would faithfully represent their principal and the goods manufactured by it, and keep the name prominently before the public, and that they would not represent rival interests.

In their business place in Chicago, the terms "Hall" and "Hall's Safes" were at all times conspicuous in signs and about the building, while A. L. Dean & Company were such representatives, and the same or similar signs have been retained as conspicuously under the operations of the appellant and of the Donnell Safe Company, as well.

SEAMAN, *Circuit Judge*, delivered the opinion of the Court:

The decree appealed from grants completely the injunctional relief sought in the cross bill filed by the appellee. Neither the prior decree, dismissing for want of equity the bill of the appellant, Hall Safe & Lock Company, nor the prior injunction restraining that company from using its corporate name in carrying on the safe and vault business, *are* brought for review. It is substantially conceded—and in any view unquestionable—that the adoption and use by the appellants of the name Hall Safe & Lock Company was wrongful. The undisputed facts—of prior business relation between the parties to this controversy, of the use and recognized value of the name "Hall" applied to the appellee's product and of the methods of appellants in displaying the name in their competitive business, after severing connection with the appellee—are equally conclusive of the right of the appellee to injunctional relief against both appellants for unfair competition. This decree, however, is exceedingly broad in terms, prohibiting advertisement, display or sale of any safes or vaults as "Hall's Safes," or under the name of
444 "Hall" in the form, unless made by the appellee. As the appellants are engaged in selling the products of the Ohio corporation, operating as The Hall Safe Company and using the name Hall upon its safes, the decree perpetually enjoins their continuance in the business of dealing in such products, either under the name of the manufacturer, or with the trade name which accompanies the goods. The appellants are under no obligation, by contract or otherwise, to deal with the appellee or its products, or to

abstain from dealing in safes of any make not tending to deceive the public and induce purchase as the appellee's manufacture.

Unless the rights of the appellee are exclusive, therefore, in the use of the trade name "Hall," as applied to their safes and vaults—irrespective of the just limitations in its use on the part of the appellants, arising out of their prior trade relations with the appellee—it is obvious that the decree cannot be upheld without modification. So the issues for review are twofold: *first*, as to the means of unfair trade practiced by the appellants, and *second*, the measure of the appellee's trade-rights thus violated and injured. The evidence upon these issues is formidable in volume and various transactions enter into consideration of the second issue, but the facts which are deemed material for solution of both are established by the testimony without substantial dispute.

1. For the inquiry of the prior trade relations on the part of the appellants and the means employed in the prosecution of their rival business after severing such relation, it is sufficient to mention the uncontroverted facts, without needless details or comment, beyond reference to the well settled doctrine of unfair competition in trade. As averred in their bill, filed in this action: the manufacture of safes, under the name of Hall's safes, commenced in Cincinnati, about 1854; the name "acquired the highest reputation in the safe business," and the safes so labeled are known to the trade and public as "of the highest type of construction, durability, efficiency and character"; and for more than twenty years the appellant, Donnell, has continuously sold safes so named, made by the successors of the original Hall. The facts are, that the operations of the Halls were successively, an individual Hall, then several copartnerships, and finally, from 1867 to 1892, under an incorporation of Hall's Safe & Lock Co.; that in 1892 the entire assets and good will of that corporation (composed of the Hall family) was acquired by the predecessor in interest of the appellee, Herring-Hall-Marvin
445 Safe Co.; that about 1880, the appellant, Donnell, became the business representative in Chicago of Hall's Safe & Lock Co. and was the sole agent up to 1886, when he formed a copartnership with one Dean, and thereafter his firm continued the agency for that corporation and its above mentioned successors in the business until 1898, when the appellant corporation was organized by Donnell and such agency terminated; and that the copartnership agency referred to operated under an express contract requiring, among other things, prominence of the trade name Hall in the business. It is established by the admissions of Donnell, in his testimony, that the name Hall Safe & Lock Co. was adopted for the appellant corporation, with no member of the name of Hall and for the purpose of retaining the business which was attached, not only to the name of Hall, but to the original corporate name of the appellee's predecessor, Hall's Safe & Lock Co., and to obtain the business mail which was often addressed in that name; also that it was the intention thereafter to deal with the later Ohio corporation, organized by the Hall family, called Hall's Safe Company. During the continuance of the agency for appellee's predecessors, the Donnell office and store displayed

numerous signs bearing the names "Hall's Safe & Lock Co.," "Hall's Safes," and the trade name Hall was kept prominently in view therein and on safes and stationery, in conformity with their contract. These signs were kept in equal prominence, at least, under the new organization and rival business of the appellants, and in advertising matter; for instance, advertising "Hall's Safe & Lock Co." as the largest manufacturer of safes and vaults in the world; also, that "The only safes made by the Halls are sold in Chicago at the old stand, 52-54 Wabash Avenue. Beware of imitations." The corporate name so assumed was changed when enjoined by the trial court, but not the other methods.

With the trade thus established by Donnell and associates, under their relations to the business and good will acquired by the appellee, the methods adopted by them, in carrying on the competing business, were unmistakably calculated to trade on the good will achieved for the safes which they had so long represented, under the name of "Hall" and "Hall's Safe & Lock Company." This course tended to deceive the public and injure the appellee in trade benefits, which were the legitimate fruit of the good will it had acquired and maintained. The doctrine of the uniform line of authorities protecting the injured party from such unfair com-
446 petition is plainly applicable, and the injunction was rightly granted. That the appellants were bound to recognize the rightful use of the name Hall, as descriptive of their safes, and did recognize its value in trade, are unquestionable propositions; and their violation of the cardinal rules of fair dealing—in keeping up the old signs and the old prominence of "Hall" as the mark of excellence in the safes, with no evidence to bring home to the public notice that the safes offered were not the Hall safes theretofore sold by them as the appellee's product—is alike unquestionable, whether the appellee's right to the use of that name was exclusive, or was either shared by the new principal, the Ohio corporation, or claimed by it as a monopoly in the name-rights. If the right to use the name were not exclusive, the appellants' conduct would be equally wrongful, but in such event the terms of the injunction would require modification to meet such view.

2. The question, therefore, whether the appellee's rights in the name Hall, as applied to its safes, are exclusive, thus arises for review, under the scope of the decree. We do not understand from the brief or oral argument of counsel for appellants, that it is contended that use of this trade name by the appellee was without right—and certainly the rightful use is not questionable under the terms of the conveyance and the subsequent participation of the Hall family in such use—but the contention is that the right is not exclusive, and that the Hall family, at least, have unrestricted right to employ the name in their rival trade. In other words, the only issue is, whether the conceded like use by the Ohio manufacturer, Hall's Safe Company, is legitimate. It must be determined as between the parties to this record, for the reason that the contention for modification of the decree rests solely on the assumed rightfulness of the manufacturer's adoption of the name; so that neither

the fact that the Ohio corporation is not present as a party, nor the more embarrassing fact that litigation is pending between that corporation and the present appellee, involving the same issue, will justify evasion of the inquiry. The contention, however, on the part of the Ohio corporation is presented by the testimony of Edward C. Hall and William H. Hall, its president and vice president respectively, and with their admissions of fact the solution is free from difficulty, as we view the evidence.

The Halls, father and sons, had established a successful business in the manufacture and sale of safes, then called and well
447 known as Hall's safes, when they organized in corporate form, in 1867, as Hall's Safe & Lock Co. Under this organization the Halls conducted the business and greatly increased the output and reputation of the safes, under the same name, until 1892, when the assets and business, as a successful going concern, were sold to the Herring-Hall-Marvin Co., a consolidation of safe manufacturers. The instrument of sale conveyed all the property of the corporation and expressly mentioned "trade-marks" "trade-rights" and "good will." In the selling corporation, the Hall family were not only the officers and managers, but owned all or substantially all the stock, and negotiated the sale. Through the sale they became controlling in interest in the purchasing corporation and were the managing officers—of the above mentioned witnesses, one being president and the other treasurer. The evidence is convincing that the name of Hall was kept prominently in view of the trade and constantly associated with the product, notwithstanding its midway position in the combined names of the new corporation. The engagement of the Halls with this corporation bound them only during the term of their service to enter no rival business. After four years in the management the above mentioned witnesses retired from the corporation and were released from their service contract, subsequently organizing the new Ohio corporation—Hall's Safe Company—and resumed the business of manufacturing safes which they named Hall safes. The Herring-Hall-Marvin Company promptly brought suit to enjoin such use of the name, and the suit is pending on appeal in the Circuit Court of Appeals for the Sixth Circuit—delayed in its course through various causes without fault of either party.

The right of these succeeding Halls to enter the business and manufacture safes of the structure and quality thus undertaken, for any market, is not questioned. So their use of the name Hall in the connection stated was within their right, unless barred by contract or estoppel, or the use is deceptive and fraudulent. Howe Scale Co. *v.* Wyckoff, Seamans & Benedict, 198 U. S. 118. The general rule for which the appellants contend—that the family surname is "incapable of exclusive appropriation by any one, as against others of the same name who are using it legitimately in their own business"—is too well settled to require citation or review of the authorities. But the exceptions above mentioned, which makes the use illegitimate, are equally well settled, and we are of opinion that the general rule is not applicable to the trade name "Hall" thus

applied to the product of the new corporation, and that the
448 use was both fraudulent and in derogation of the rights acquired by the appellee under the conveyance by the original Hall corporation. The fact that such conveyance was not executed by the Halls as individuals cannot absolve them from the obligations of a contract, made in the corporate name, wherein they were individually the beneficiaries. As stated in McKinley *v.* Wheeler, 130 U. S. 630, 636, "the court, when necessary, will look beyond the name of a corporation to the individuals whom it represents." See opinion of Judge Baker, speaking for this court, in Siemens-Halske Electric Co. *v.* Duncan Electric Mnfg. Co. *et al.*, decided October 3, 1905. The corporate form of the transfer will not be permitted "to distort or hide the truth," (Anthony *v.* American Glucose Co., 146 N. Y. 407, 413.) but a court of equity will treat the contract in conformity with its true meaning.

The organizers and owners of this new corporation were not only the Halls who managed the original business, who established and maintained the reputation of the Hall safes, but they personally negotiated the sale of that business and good will to the purchasing corporation, for a large price, and received (as stockholders) a large share of the proceeds; they became managers of the purchasing corporation and so continued for four years, maintaining and enlarging the business and good will so acquired, in the product known as Hall safes; and thus participating and profiting in the transfer of that valuable asset—which they had given to the selling corporation, through acquiescence, at least, in the use of the family name—their efforts to repossess themselves of its essence, destroying or impairing the value of the property rights granted to the purchaser, are plainly inequitable, and, as we believe, violative of their contract obligations.

In any view of the doctrine of unfair trade, we are of opinion that the appellee is entitled to protection against the sale by these appellants of safes so made and marked as Hall safes, as representatives of the so called Hall's Safe Company, or otherwise. The recent decision in Howe Scale Company *v.* Wyckoff, Seamans & Benedict, *supra*, is relied upon by the appellants for support of their contention that the Halls were not deprived of right to use the family surname by these transactions, but we are satisfied that the case is plainly distinguishable; that the contract elements above mentioned in the case at bar were not there present, and the decision was expressly grounded upon the absence of such obligations, to-
449 gether with the absence of deception or confusion in the use of the name Remington; and that the elements thus appearing in the present case are unmistakably recognized as excepted from the rule thus upheld.

Without reference to the question discussed in the briefs, whether the name Hall has been so long identified with the business as to acquire a secondary meaning, within the authorities cited, we are of opinion that the uses of the name upon the safes represented and sold by the appellants, are plain violations of the doctrine of fair

trade, and that the appellees are entitled to the protection granted by the decree of the Circuit Court.

The decree accordingly is affirmed.

And afterwards, to-wit: On the eleventh day of January, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Decree, Jan. 11, 1906.

THURSDAY, *January* 11, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. Christian C. Kohlsaat, Circuit Judge. Hon. Arthur L. Sanborn, District Judge.

Before Hon. Peter S. Grosscup, Circuit Judge; Hon. Francis E. Baker, Circuit Judge; Hon. William H. Seaman, Circuit Judge.

1192.

HALL SAFE & LOCK COMPANY and JAMES W. DONNELL
vs.
HERRING-HALL-MARVIN SAFE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause, be, and the same is hereby affirmed with costs.

450 *Certificate of Clerk.*

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 434 to 450, inclusive, contain a true copy of the papers filed (except briefs of Counsel) and proceedings had thereon in the United States Circuit Court of Appeals for the Seventh Circuit in the case of Hall Safe & Lock Company and James W. Donnell *vs.* Herring-Hall-Marvin Safe Company, No. 1192, October Term, 1905, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of September, A. D. 1906.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

451 United States Circuit Court of Appeals for the Seventh Circuit.

October Term and Session, 1905.

No. 1192.

HALL SAFE AND LOCK COMPANY and JAMES W. DONNELL, Appellants,
vs.
HERRING-HALL-MARVIN SAFE COMPANY.

Stipulation.

It is hereby stipulated that the certified transcript of record filed in the Supreme Court of the United States on the application for writ of certiorari may be taken as a return to the writ of certiorari by the Supreme Court.

GEORGE P. MERRICK,
S. S. GREGORY,
A. F. HATCH,
Counsel for Appellants.
CHARLES H. ALDRICH,
LAWRENCE MAXWELL, JR.,
Counsel for Appellee.

Endorsed: Filed Nov. 7, 1906. Edward M. Holloway, Clerk.

452 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Being informed that there is now pending before you a suit in which Hall Safe & Lock Company and James W. Donnell are appellants, and Herring-Hall-Marvin Safe Company is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Northern District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein

should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby com-
453 mand you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of October, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

454 UNITED STATES OF AMERICA, *Seventh Circuit, ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Hall Safe and Lock Company and James W. Donnell, Appellants, *vs.* Herring-Hall-Marvin Safe Company, Appellee, is a full, true and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventh day of November, A. D., 1906.

[Seal United States Circuit Court of Appeals,
Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[Endorsed:] File No. 20374. Supreme Court of the United States. No. 106. October Term, 1906. James W. Donnell, *vs.* Herring-Hall-Marvin Safe Co. *et al.* Writ of Certiorari and Return. Filed Nov. 9, 1906. Filed Nov. 1, 1906. Edward M. Holloway, Clerk.

Supreme Court, U. S.
FILED
SEP 26 1906
JAMES H. MCKENNEY
Clerk

106.

No. [redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906

JAMES W. DONNELL,
Petitioner,

vs.

HERRING-HALL-MARVIN SAFE COMPANY and HALL SAFE & LOCK COMPANY,
Respondents.

Petition and Brief to Review Decision of the United States Circuit Court of Appeals of the Seventh Circuit.

PETITION AND MOTION FOR CERTIORARI WITH NOTICE OF SUBMISSION THEREOF, PROOF OF SERVICE AND BRIEF IN SUPPORT OF MOTION.

GEORGE P. MERRICK,
S. E. GREGORY,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1906.

James W. Donnell, *Petitioner*, *vs.* Herring-Hall-Marvin Safe Company and Hall Safe & Lock Co., *Respondents.*	Petition for Writ of Certiorari to United States Circuit Court of Appeals for the Seventh Circuit.

To the Above Named Respondents:

GENTLEMEN:—

You will please take notice that on Monday, the 8th day of October, 1906, at the opening of court on that day, or as soon thereafter as counsel can be heard, we shall submit in this court a motion in this cause that a writ of certiorari issue herein to the United States Circuit Court of Appeals for the Seventh Circuit, in accordance with the prayer of the petition, of which and of this motion and brief in support thereof, a copy is herewith furnished you.

Yours, etc.,

GEORGE P. MERRICK,

S. S. GREGORY,

Solicitors and Counsel for Petitioners.

Received a copy of the above notice, motion, petition and brief this 21st day of September, A. D. 1906.

CHARLES H. ALDRICH,

HENRY S. MCAULEY,

Counsel for Herring-Hall-Marvin Safe Co.

AZEL F. HATCH,

Counsel for Hall Safe & Lock Co.

SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1906.

James W. Donnell, *Petitioner*, *vs.* Herring-Hall-Marvin Safe Company and Hall Safe & Lock Co., *Respondents.*	Petition for Writ of Certiorari to United States Circuit Court of Appeals for the Seventh Circuit.

And now comes the above named petitioner by George P. Merrick and S. S. Gregory, his solicitors and counsel, and moves that a writ of certiorari issue herein to the United States Circuit Court of Appeals for the Seventh Circuit, in accordance with the prayer of the petition heretofore filed in this cause.

Respectfully submitted,

GEORGE P. MERRICK,
S. S. GREGORY,
Solicitors and Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1906.

Petition by James W. Donnell, one of the appellants, for a writ of certiorari from the Supreme Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, requiring that court to certify to the Supreme Court the case wherein the above named petitioner, together with Hall Safe & Lock Company, are appellants, and Herring-Hall-Marvin Safe Company is appellee.

To the Supreme Court of the United States:

The petitioner, James W. Donnell, appellant, as above mentioned, respectfully represents that the case heard in the Circuit Court was originally brought by the said appellant Hall Safe & Lock Company by bill in equity in the Superior Court of Cook County, Illinois, against the appellee and respondent Herring-Hall-Marvin Safe Company and removed by the last named company to the Circuit Court of the United States for the Northern District of Illinois, on the ground of diversity of citizenship.

The Hall Safe & Lock Company was a corporation organized under the laws of Illinois, and the defendant in that bill, respondent herein, was a New Jersey corporation. The general object of the bill was to enjoin and restrain the defendant therein from carrying on the business of selling safes, vaults, etc., as the successor of the Hall Safe & Lock Company, the Illinois corporation, and from representing that it was in any way connected with that company. This

bill was dismissed for want of equity December 13, 1904 (Transcript 62), upon grounds which will sufficiently appear and the propriety of this decree is not called in question on this application.

However, the defendant in that bill, Herring-Hall-Marvin Safe Company, filed its cross-bill in that case, bringing in your petitioner as a defendant therein and upon a hearing on the cross-bill the Circuit Court by its final decree of June 1, 1905, enjoined your petitioner and the Hall Safe & Lock Company, of Illinois, its and their successors, assigns, servants, agents and employes of every name and description from carrying on the safe and vault business in the name of Hall Safe & Lock Company, or any name of which the name Hall is a part, and from marking their safes with any name of which the word Hall is a part and from advertising or offering safes or vaults for sale as Hall safes or by any name of which the word Hall is a part, except or unless the safes so offered should have actually been made and manufactured by the original Hall Safe & Lock Company of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company. (Trans., 66.)

From that decree your petitioner and the Hall Safe & Lock Company of Illinois prosecuted an appeal to the Circuit Court of Appeals for the Seventh Circuit, on which proceeding, the decree of the Circuit Court was affirmed. As the Hall Safe & Lock Company of Illinois does not seek to have the decree reviewed, in so far as its rights are involved, your petitioner makes this application for himself alone and joins the company in question as a respondent.

Your petitioner further respectfully represents that the particular question intended to be presented here is whether or not the decree of the Circuit Court is justified in so far as it seeks to prevent your petitioner from selling as agent at Chicago, safes, vaults, etc., made by the Hall's Safe Company of Ohio, a corporation organized by the sons of Joseph L. Hall, the founder of the business which ultimately Herring-Hall-Marvin Safe Company took over, with which business they had been connected for many years and until 1896.

The learned Circuit Court of Appeals was of opinion that these gentlemen and this Ohio Company doing business at Cincinnati were not entitled to use the name "Hall" in the business of selling safes. The Hall's Safe Company of Ohio was not a party to this case, but was sued by the Herring-Hall Company in the Ohio Circuit, and from a decree in favor of that company, Messrs. Hall and Hall's Safe Company appealed to the Circuit Court of Appeals for that Circuit and that learned court, the opinion of the Circuit Court of Appeals for the Seventh Circuit, in this matter, being urged upon its attention, expressly differed from the views there announced, reversed the decree appealed from as to the defendants Hall and held that the bill of the Herring-Hall Company, which included several of the sons of Joseph L. Hall, as defendants, stated no case against them, and that the injunction as to the Halls' Safe Company of Ohio should be so modified as only to enjoin that company from carrying on the safe or vault business in its corporate name or any other name having similarity to the name "Hall Safe & Lock Company," without also

giving information to the public that it is not the business formerly carried on by the Hall's Safe & Lock Company, and from making, advertising or otherwise designating its safes and vaults as the products of the latter company, or its successors in business, or pretending that it is carying on the business started by Joseph Hall and continued by the latter company and from interfering in any manner with the exclusive right of the complainant to possess and enjoy the good will acquired by the latter company and from using its trade name without so qualifying it as to show that such trade name is not the one formerly used to designate the products of the latter company.

The learned Circuit Court of Appeals below distinctly held that it was necessary to determine in this case what the rights of Hall's Safe Company of Ohio were in this regard, as appears by the opinion of that court. The opinion of the Circuit Court of Appeals for the Sixth Circuit not yet having been officially reported, is printed and submitted with the papers in this case for the convenience of this court.

It is submitted that there is a radical divergence of view on this important topic between the two learned courts of appeals; and, with deference, that the learned court for the Sixth Circuit has reached a sounder and more correct conclusion that that announced by the learned court below and one more consonant with the rule prescribed by this court. If this conclusion is to be criticised at all, it would seem to be in that it attaches limitations to the right of the Halls to the use of their name not warranted by the facts in that case.

I.

Your petitioner further respectfully represents that, while the learned judge writing the opinion of the Circuit Court of Appeals below, declares that the facts involved in this case are many and complicated, he ventures, with deference, to suggest that they are quite simple.

About sixty years ago one Joseph L. Hall started the business of manufacturing safes at Cincinnati, Ohio. These safes had a large sale and acquired considerable reputation and Mr. Hall carried on this business with some success through various partnerships, in all of which his name appeared, until 1867, when the Hall Safe & Lock Company was incorporated to take over this business and continue it at Cincinnati. Of this company Mr. Hall was president and continued to be until his death in 1889, when his family succeeded to his interest in the corporation and continued to carry it on until 1892. In that year the ~~re-~~ organized Herring-Hall-Marvin Company was organized under the laws of New Jersey as a combination to take over the business of most of the leading safe manufacturers of the United States and that company by bill of sale May 12, 1892 (Trans., 215) acquired the property and good will of the Hall Safe & Lock Company. The New Jersey company afterwards failed and the present company, the Herring-Hall-Marvin Safe Company, also organized under the laws of New Jersey, acquired title to the property of the former company by purchase from its receivers.

William H. Hall and Edward C. Hall, two of the

sons of Joseph L. Hall, and who had been identified with him in the conduct of this business, took service with the first Herring-Hall Company, William H. Hall becoming treasurer of that company and Edward C. Hall becoming president first and afterwards vice president. These gentlemen agreed when they entered into the service of that company that they would not engage in the safe business east of the Mississippi river so long as the company desired to retain their services, as stipulated in their contracts. (Trans., 280-322-323.) They ceased to be officers of the company and left its service in August, 1896, and were then fully released from all contract obligation in this regard (Trans., 260-281-2); and thereafter in the month of September in that year Edward C. Hall, William H. Hall and Charles O. Hall, all sons of Joseph L. Hall, caused to be organized under the laws of the State of Ohio a corporation under the name of the Hall's Safe Company for the purpose of engaging in the business of manufacturing and selling safes and vaults. (Trans., 29-49.) This company thereafter and up to the time of the bringing of this suit continued to carry on business at Cincinnati of the character for which it was organized, and it is this company which the Court of Appeals below holds is not entitled to carry on this business, but which the Court of Appeals for the Sixth Circuit holds may do so by taking such measures to avoid deception of the public, as are provided for in the decree from which quotation has already been made.

Your petitioner had been a member of A. L. Deane & Co., which had for many years in Chicago sold safes and vault work of the Hall manufacture. When the

first Herring-Hall Company in 1892 was formed and acquired the Hall property, that company terminated the agreement between the old Hall Company which was Hall's Safe & Lock Company, and A. L. Deane & Co. (Trans., 51.) Thereafter, however, Deane & Co. did act as selling agents to some extent for the Herring-Hall Company; but in February, 1898 (Trans., 52), they incorporated the Hall Safe & Lock Company of Illinois and claimed the right to use that name in the safe business in Chicago. Your petitioner does not now attempt to justify or explain this step further than to say that the evidence in this record to some extent warrants the conclusion that the Herring-Hall Company for some time after its organization sold its product under its own name and not under the names of the several constituent companies out of which it was formed, and hence there was some ground for saying that that company might be deemed in part at least to have abandoned the Hall name, except as a part of its corporate designation.

Your petitioner is advised that the fact of the formation of this Illinois Company is not otherwise material except in so far as it might be considered for the purpose of justifying some restrictions upon the right of petitioner to sell the product of the Hall's Safe Company, which would otherwise be wholly unwarranted.

Your petitioner further respectfully represents that by the decree of December 13, 1904, dismissing the original bill filed in this cause (Trans., 62-63), this petitioner and the respondent Hall Safe & Lock Company were allowed twenty days in which to make the necessary arrangements to carry on their business

in some other name and that accordingly (Trans., 66), a corporation was organized under the laws of the State of Illinois named The Donnell Safe Company, of which your petitioner is president (Trans., 411-429), and this corporation is carrying on the safe and vault business in Chicago, a large part of that business consisting in equipping bank vaults and other large vaults with patent linings and equipment, the right of your petitioner to deal in which is not at all here in question, that particular line of work having also been carried on by the Hall Safe & Lock Company of Illinois and the firm of A. L. Deane & Co. (Trans., 409-410.)

Inasmuch as the final decree (Trans., 66) recites the incorporation of the Donnell Safe Company and that it has succeeded to the business of the Illinois Hall Safe & Lock Company and enjoins that company and your petitioner, its and their successors, assigns, agents, servants and employes from, among other things, advertising or offering safes or vaults for sale as Hall's safes, by any name of which the word "Hall" is a part, except or unless the safes so offered were manufactured by the original Hall's Safe & Lock Company of Ohio, or its successors in business, the first Herring-Hall Company, its receivers, or the present Herring-Hall Company, the effect of the decree is to restrain your petitioner from selling the product of the Hall's Safe Company of Ohio, the present Company, and to this extent limit the rights of that company in the great market for its product found in the City of Chicago, and in effect throughout the Seventh Judicial Circuit.

As your petitioner is advised the learned Court of Appeals below reaches this conclusion only by first establishing to its satisfaction that the Hall's Safe Company of Ohio has no right to carry on the safe and vault business under that corporate name, although it was organized and is managed, directed and controlled by three of the sons of Joseph L. Hall, the original founder of the business in Cincinnati.

Your petitioner further respectfully represents that as he is advised, having regard to the fact that he is under no contract relation whatever with the respondent Herring-Hall Company and that no such relation existed between the incorporators of Hall's Safe Company of Ohio, the present company, nor between that company and the Herring-Hall Company, the only question presented on this application is whether, either with or without such restrictions and regulations as a court of chancery may reasonably impose in order to avoid deception of or misapprehension on the part of the public, the Halls of Cincinnati ought to be permitted to carry on the business, in which their lives have been spent, under a corporate name containing their surname; and whether your petitioner can be permitted to sell their product under like regulation, should circumstances seem to warrant, in the line of business in which he has been engaged for practically all his life.

II.

Your petitioner further respectfully represents that he is advised that, while there is an extensive literature upon the subject of unfair competition in trade

in the use of names similar to or identical with those of competitors, it is not necessary for the purpose of reaching a correct conclusion in this case to traverse this broad field; but that this court in the recent case of *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict*, 198 U. S., 118, has laid down principles, which if followed, must establish the erroneous nature of the decree complained of. In that case Mr. Chief Justice Fuller, speaking for the court, said:

"It is said that the use of the word 'Remington' in the name 'Remington-Sholes' was unnecessary—as if necessity were the absolute test of the right to use. But a person is not obliged to abandon the use of his name or to unreasonably restrict it. The question is whether his use is reasonable and honest, or is calculated to deceive. 'It is a question of evidence in each case whether there is false representation or not.' *Burgess* v. *Burgess*, 3 De G. M. & G., 896."

In the case cited by the learned Chief Justice, one John Burgess carried on an extensive trade in the manufacture and sale of fish and other sauces at 107 Strand. Among other sauces which he manufactured was one called "Essence of Anchovies." The plaintiff was a son of John Burgess, in partnership with his father, and continued the business at the same place after his father's death. The plaintiff had two sons, William Harding and John James, whom he employed. Afterwards William Harding Burgess started in the same line of business for himself. Over his shop he put the words "W. H. Burgess, late of 107 Strand," and on the side of his shop door a plate with the words "Burgess's Fish Sauce Warehouse, late of 107 Strand." In his advertisement he followed closely the advertisement of the plaintiff.

The plaintiff brought an action for an injunction and Vice Chancellor Kindersley restrained the defendant from continuing the use of the words after his name "late of 107 Strand," and also the words "Burgess's Fish Sauce Warehouse late of 107 Strand," but refused to enjoin the defendant W. H. Burgess in any other respect.

On appeal the Lord Justice Turner delivered the following opinion, from which the quotation found in the opinion of this court was extracted:

"I concur in the opinion that this motion should be refused with costs. No man can have any right to represent his goods as the goods of another person, but in applications of this kind it must be made out that the defendant is selling his own goods as the goods of another. Where a person is selling goods under a particular name, and another person, not having that name, is using it, it may be presumed that he so uses it to represent the goods sold by himself as the goods of the person whose name he uses; but where the defendant sells goods under his own name, and it happens that the plaintiff has the same name, it does not follow that the defendant is selling his goods as the goods of the plaintiff. It is a question of evidence in each case whether there is false representation or not. Looking at the labels before us, I think it is clear that, since the order made by the vice chancellor, there has been no representation made on the part of the defendant that the goods which he is selling are the goods manufactured by the plaintiff."

Lord Justice Knight Bruce also delivered an opinion which has been referred to as epigrammatic. Lord Esher commenting on it in a later case said:

"I do not think that a truthful proposition is a bit worse because it is put into an epigrammatic form.

It fixes the proposition on one's memory; and when I look at the judgment of Lord Justice Knight Bruce I can see no difference in the smallest respect between that judgment and the judgment of Lord Justice Turner, which immedately follows it, except in the form of expression."

Turton v. *Turton,* L. R., 42 Chancery Division, 128-136. The opinion of the learned lord justice in question is as follows:

"All the queen's subjects have a right, if they will, to manufacture and sell pickles and sauces, and not the less that their fathers have done so before them. All the queen's subjects have a right to sell these articles in their own names, and not the less so that they bear the same name as their fathers; nor is there anything else that this defendant has done in question before us. He follows the same trade as that his father follows and has long followed, namely, that of a manufacturer and seller of pickles, preserves and sauces; among them, one called "essence of anchovies.' He carries on business under his own name, and sells his essence of anchovies as 'Burgess's Essence of Anchovies,' which in truth it is. If any circumstance of fraud, now material, had accompanied, and were continuing to accompany, the case, it would stand very differently; but the whole case lies in what I have stated. The whole ground of complaint is the great celebrity which, during many years, has been possessed by the elder Mr. Burgess's essence of anchovies. That does not give him such exclusive right, such a monopoly, such a privilege, as to prevent any man from making essence of anchovies, and selling it under his own name. Without therefore questioning any one of the authorities cited, all of which I assume to have been correctly decided, I think that there is here no case for an injunction."

The doctrine of that case as adopted by this court has been fully recognized in later English cases, also

referred to in the opinion of the learned chief justice.

Reddaway v. *Banham,* L. R. App. Cases, 1896, 199.

Turton v. *Turton,* already cited.

This court summed up the whole matter in the concluding paragraph of the opinion as follows:

"We hold that in the absence of contract, fraud or estoppel any man may use his own name in all legitimate ways and as the whole or a part of a corporate name and in our view defendant's name and trade mark were not intended or likely to deceive and there was nothing of substance shown in defendant's conduct in their use constituting unfair competition or calling for the imposition of restrictions lest actionable injury might result as may confessedly be done in a proper case."

Your petitioner further respectfully represents that the original Hall Company had been out of business for many years at the time when this suit was started and it seems rather fanciful to suppose that one purchaser in ten of safes would care at all whether he was buying a safe made by the successor in interest of that corporation or not. In fact, it seems much more reasonable to suppose that he would feel better satisfied if he desired a Hall safe to purchase one made by a company organized and controlled by the sons of the original founder of the business than a safe made by a trade successor. In this aspect it would seem that it would hardly be necessary to impose the restrictions upon the sale of their product decreed against the Hall Safe Company by the Circuit Court of Appeals for the Sixth Circuit. It may

be that the fact of the organization of the Illinois Hall Safe & Lock Company warrants the imposition of such terms upon the right of your petitioner to sell the product of the present Hall's Safe Company of Ohio, but it is respectfully submitted that no decree going beyond this can properly be made in this case.

III.

Your petitioner further respectfully represents that inasmuch as the jurisdiction of the Circuit Court of the United States for the Northern District of Illinois was invoked only upon the ground of diversity of citizenship of the parties the judgment and decree of the Circuit Court of Appeals herein is final and that the same was entered on the 11th day of January, A. D. 1906.

Your petitioner further respectfully submits that the question involved in this case is one of general interest and importance; that it is quite apparent here that there is a real and substantial diversity of opinion between the learned Circuit Court of Appeals below and the Circuit Court of Appeals for the Sixth Circuit in respect of not merely similar questions but of identically the same question.

A certified copy of the entire record of the case in the Circuit Court and the Circuit Court of Appeals is furnished herewith to this court by the petitioner as part of this application.

Wherefore your petitioner respectfully prays that a writ of certiorari may issue out of and under the

seal of this court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and send to this court by a day certain therein to be designated, a full and complete transcript of the record and all proceedings taken or had in the said Circuit Court of Appeals in the case therein of Hall Safe & Lock Company and your petitioner, appellants against Herring-Hall-Marvin Safe Company, appellee, to the end that this case may be certified to this court for its review and determination, as provided in Section 6 of the Act of Congress entitled: "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," approved March 3, 1891, and that your petitioner may have such order and further relief or remedy as to this court may seem to be appropriate and in conformity to law. And your petitioner will ever pray, etc.

JAMES W. DONNELL,
Petitioner,
By GEORGE P. MERRICK,
S. S. GREGORY,
His Solicitors and Counsel.

In the opinion of the learned Court of Appeals for the Sixth Circuit, which we print at the close of this brief and in the opinion of the learned Court of Appeals for the Seventh Circuit, which may be found on pages 440-449, inclusive, of the transcript, the leading facts, about which there is little controversy, are stated. In the hope it may aid the court to have here a further and more detailed statement, we venture to repeat the facts as concisely as possible.

Joseph L. Hall began the manufacture of safes and vaults at Cincinnati, Ohio, in 1847, and for twenty years continued the manufacture of safes and vaults alone and under different partnership designations, in which his name always formed a part. In 1867 he organized a corporation under the laws of Ohio known as "Hall's Safe & Lock Company," and that company continued in the active business of manufacturing and selling safes and vaults until 1892. During this time the product of Mr. Hall, his various partnerships and the corporation bearing his name, achieved and deserved a high reputation in the trade. On or about the time of the incorporation of Hall's Safe & Lock Company of Ohio, Joseph L. Hall, who was the father of five sons, interested at least three, if not all of them, and two of them particularly, in his business, both Edward C., his eldest son, and William H., his second son, becoming at an early age interested in the business begun by their father and they have never been engaged in any other business and know no other business.

In 1889, Joseph L. Hall, died, and he was succeeded in the management of the company which he

had formed by his eldest son, Edward C. Hall, who became upon the death of his father, the president of the company.

In 1892, a corporation styled Herring-Hall-Marvin Company was organized under the laws of New Jersey and by purchase took over the assets and good will of Hall's Safe & Lock Company, with other companies. Evidencing the taking over of the assets of the Hall's Safe & Lock Company, a bill of sale was executed by that corporation to promoters on May 12, 1892, who, in turn, on the same day, conveyed what they had obtained to the Herring-Hall-Marvin Company. On the same day this transfer by the corporation was made, Edward C. and William H. Hall entered into contracts of employment with the Herring-Hall-Marvin Company, wherein they agreed not to compete with their employer in the safe business in certain territory so long as their services might be required. Edward C. Hall became the president and William H. Hall, the treasurer of the Herring-Hall-Marvin Company and so remained for a number of years. In August, 1896, they severed their relations with the Herring-Hall-Marvin Company and obtained contracts of release from their personal obligations, and shortly thereafter with another brother, Charles O. Hall, organized under the laws of Ohio a corporation, under the name of "The Hall's Safe Company." In 1897 the Herring-Hall-Marvin Company filed a bill in the United States Court for the Southern District of Ohio seeking to enjoin the Hall's Safe Company and the Halls individually from manufacturing and selling safes under the name of the Hall's Safe Company or by any

other trade name similar thereto. Shortly after the filing of this bill, the Herring-Hall-Marvin Company went into the hands of receivers and some years later upon a reorganization such receivers sold the assets of the latter company to another corporation, also organized under the New Jersey laws, known as the "Herring-Hall-Marvin Safe Company." After a delay of several years, the litigation thus instituted resulted in the decree referred to in the opinion of Mr. Justice Severens, enjoining the Hall's Safe Company and the Messrs. Hall from manufacturing safes, using that corporate name, the name "Hall," or any name of which the word "Hall" formed a part and upon appeal from the Circuit Court to the Circuit Court of Appeals for the Sixth Circuit, this sweeping decree was reversed and modified, as has been stated in the foregoing petition.

In 1880 James W. Donnell, petitioner herein, became the selling agent at Chicago for the original Hall's Safe & Lock Company of Ohio and remained as such having charge of the branch office of the Hall's Safe & Lock Company until 1886, when he became associated with A. L. Deane, now deceased, under the firm name of A. L. Deane & Company, and they continued to sell the product of the Hall's Safe & Lock Company of Ohio, at Chicago until 1892, when that corporation sold its assets and good will to the New Jersey corporation known as Herring-Hall-Marvin Company. A. L. Deane & Co. then began the sale of the product of Herring-Hall-Marvin Company, the successor of Hall's Safe & Lock Company until March, 1898, when that firm went into liquidation. For something more than a year prior thereto they had also

dealt in the product of the new Ohio corporation formed as stated by Edward C., William H. and Charles O. Hall, sons of Joseph L. Hall, under the corporate name of The Hall's Safe Company. Shortly after the failure of A. L. Deane & Co., Mr. Deane and Donnell, the petitioner herein, organized a corporation under the laws of the State of Illinois, under the name of Hall's Safe and Lock Company, and as such continued to do business until by the decree of the Circuit Court for the Northern District of Illinois, it was enjoined from continuing to use such corporate name. In June, 1904, respondent, Herring-Hall-Marvin Safe Company established a sales room in Chicago and advertised itself as the "successor" of Hall's Safe & Lock Company, which was the first time that the respondent, Herring-Hall-Marvin Safe Company, had so done or had attempted to do any business, locally at least, in Chicago, and the respondent, Hall's Safe & Lock Company, filed a bill as stated in the foregoing petition against respondent, Herring-Hall-Marvin Safe Company. The latter company caused the bill to be removed to the Federal Court, filed an answer and cross-bill making petitioner a party and after a somewhat extended hearing, secured a decree enjoining respondent, Hall's Safe and Lock Company, of Illinois, and petitioner Donnell, its and their successors, assigns, servants, agents and employes of every name and description whatsoever, from carrying on the safe and vault business in the name of Hall's Safe and Lock Company, or any name of which the name "Hall" formed a part and from marking their safes with any name of which the word "Hall" is a part and from advertising or offering

safes and vaults for sale as "Hall's Safes," or by any name of which the word "Hall" is a part, except and unless the safes so offered shall have actually been made by the original Hall's Safe & Lock Company of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company. Pending this suit, respondent, Hall's Safe & Lock Company, had in compliance with an interlocutory decree, ceased doing business, and also pending the suit, the Donnell Safe Company, was incorporated and began the sale of the product of the Hall's Safe Company of Ohio. From this sweeping decree, an appeal was perfected to the Circuit Court of Appeals for the 7th Circuit in which its correctness in so far as it prohibited a continuance of the use of the name "Hall's Safe & Lock Co." was not questioned but the extreme breadth and sweeping effect of the decree in so far as it prohibited the sale of safes as "Hall's Safes," or by any other name of which the word "Hall" was a part, not the product of respondent, Herring-Hall-Marvin Safe Company, or its predecessors, was attacked. Because the jurisdiction of the court below was invoked solely by reason of diverse citizenship of the parties, the decree, unless reversed, is final.

It is here insisted that the decree is so gravely wrong in its extreme breadth, it should not be permitted to stand. It was claimed in the trial court and in the Court of Appeals for the Seventh Circuit, and it is insisted now, that the decree here in question cannot be sustained unless it shall be held that respondent, Herring-Hall-Marvin Safe Company has the *exclusive right* to the use of

the name "Hall" in the manufacture and sale of safes and vaults. We respectfully contend the decree is erroneous because contrary to the law as laid down by this court in a very recent case and also opposed to well considered decisions of many other courts of great respectability. We submit, and we believe it will not be denied, that a surname cannot be exclusively appropriated in the absence of fraud, estoppel or of contract so providing. This court has said in a recent case:

"But it is well settled that a personal name cannot be exclusively appropriated by anyone as against others having a right to use it. * * * We hold that in the absence of contract, fraud or estoppel, any man may use his own name, in all legitimate ways, and as the whole or a part of a corporate name."

Howe Scale Co. v. *Wyckoff, Seamans & Benedict*, 198 U. S., 140.

There is here no contract and by proper use of the name the other exceptions can be provided against by appropriate decree. It will not be attempted, nor is it necessary, to justify the acts of petitioner Donnell in organizing the Illinois corporation, as Hall Safe and Lock Company, except in so far as we think it is shown he did so believing that he had a legal right so to do and that he did so with the approval or acquiescence, or at least without the objection of the corporation organized by the Hall Brothers. It is further worthy of note that pending the litigation in the trial court, petitioner Donnell, as president and manager of the Illinois corporation, known as Hall Safe and Lock Company, upon the entry of the interlocutory decree immediately complied therewith

and caused the Hall Safe and Lock Company to cease business at once and immediately organized the Donnell Safe Company, which began and up to the affirmance of the decree here complained of, continued to deal in and sell the product of the Ohio corporation organized and managed by the Hall Brothers and known as The Hall's Safe Company.

The situation, then, as it now exists, is as follows: The learned Court of Appeals for the Sixth Circuit, which had before it and considered the opinion of the learned Court of Appeals of the Seventh Circuit and expressly referred to it in its decision, reversed the decree of the Circuit Court for the Southern District of Ohio, in so far as the Hall Brothers were concerned, and modified the injunction granted by substituting, in lieu of the sweeping decree entered by the Circuit Court, an injunction enjoining The Hall's Safe Company from carrying on the safe and vault business in that name or any other name having a similarity to the name Hall's Safe & Lock Company, without also giving information to the public that it is not the business formerly carried on by the Hall's Safe & Lock Company; and from marking, advertising or otherwise designating its safes and vaults as the product of the Hall's Safe & Lock Company, or its successors in business, or pretending that it is carrying on the business of Joseph L. Hall and continued by the Hall's Safe & Lock Company; and from interfering in any manner with the exclusive right of complainant to possess and enjoy the good will of the Hall's Safe & Lock Company, and from using the trade name of said last named company, without at the same time so qualifying such trade name as to

show that the trade name used is not one formerly used to designate the products of the Hall's Safe & Lock Company.

While on the other hand, by the decree of the learned Court of Appeals for the Seventh Circuit, the product of the Hall's Safe Company of Ohio, may not be sold by petitioner, with or without any explanation as to source of manufacture, thus depriving petitioner of the right to sell a certain product in *one* circuit that is freely permitted to be manufactured and sold by every one elsewhere, provided at all times that a proper explanation as to source of manufacture is given. It is important to bear in mind that the Ohio corporation, The Hall's Safe Company, was not a party to this proceeding. This fact did not, of course, escape the attention of the learned Court of Appeals for the Seventh Circuit, and is thus commented upon by it in its opinion:

"The question, therefore, whether the appellee's (respondent, Herring-Hall-Marvin Safe Company) rights in the name 'Hall' as applied to its safes, are exclusive, thus arises for review under the the scope of the decree. We do not understand from the brief or oral argument of counsel for appellants, that it is contended that use of this trade name by the appellee was without right, and certainly the rightful use is not questionable under the terms of the conveyance and the subsequent participation of the Hall family in such use—but the contention is that the right is not exclusive, and that the Hall family, at least, have unrestricted right to employ the name in their rival trade. In other words, the only issue is, whether the conceded like use by the Ohio manufacturer, Hall's Safe Company, is legitimate. It must be determined as between the parties to this record for the reason that the contention for modification of the decree rests solely on the assumed rightfulness of the manufact-

urer's adoption of the name; so that neither the fact that the Ohio corporation is not present as a party, nor the more embarrassing fact that litigation is now pending between that corporation and the present appellee, involving the same issue, will justify evasion of the inquiry."

It will be further noted that in the opinion of the learned Court of Appeals for the Seventh Circuit, it is assumed that certain contract relations existed between respondent Herring-Hall-Marvin Safe Company and Edward C. and William H. Hall by reason of their participation as stockholders either in the old Hall company or the Herring-Hall corporation, which prohibited them from engaging in the safe business, using the surname Hall, either as part of a corporate name or as descriptive of the product made by them or by their company and in this connection certain authorities were cited by that learned court in support of the conclusion reached. Now the facts with reference to that subject are fully contained in the record and may be briefly restated as follows: Edward C. Hall and William H. Hall were stockholders, directors and officers of the Hall's Safe & Lock Company of Ohio, at the time that such corporation conveyed by bill of sale its assets and good will to the Herring-Hall-Marvin Safe Company. It may be fully and freely conceded that the corporation, by its agreement to dissolve and by the conveyance of its good will, barred itself from ever afterward resuming business using that or a similar corporate title. No such contract was made by the stockholders. No contract relation existed preventing in any way, shape or manner individual stockholders from using their own

names in the safe business, either as persons or in a corporate title, except the limited covenants made by the two Hall's, effective only while they remained with the new company.

It will be noted that both courts of appeal referred to cases cited by counsel in support of the proposition that the acts of a corporation bound the stockholders, directors and officers. In the case in the Sixth Circuit, the learned court, referring to *McKinley* v. *Wheeler*, 130 U. S., 630, and *Anthony* v. *American Glucose Company*, 140 N. Y., 407, say:

"The cases cited to support their contention that the court may look through the form of corporate organization and fasten upon the stockholders, a liability for the acts of the corporation, do not support such a doctrine as applicable to contract relations. They were all cases where for special purposes and under special circumstances the court held that it was competent and proper to regard the rights and duties of stockholders in corporations. None of them impugns the general rule above stated that in matters of contract the officers and agents of a corporation are not bound personally by stipulations made by them in behalf of their principal. This rule is not affected by the circumstance that they are indirectly interested as stockholders in the contracts of their corporation. If it were so, it would break down all distinction between the corporate entity and its component parts."

Referring further to the same subject and showing incidentally that the Court of Appeals for the Sixth Circuit had carefully considered the opinion of the Court of Appeals for the Seventh Circuit, Mr. Justice Severens, says:

"It is true that the learned judge who delivered the opinion said *arguendo* that the court might look behind the corporation and find whether there were

equities between the Herring-Hall-Marvin Company and the members of Hall's Safe & Lock Company which would attach to The Hall's Safe Company, of which they are now members, and concluding there were such equities, proceeded to deduce the consequences. Without repeating what we have said upon this subject, we are constrained to think that the defendants Hall were not bound individually in law or in equity by the contract of their corporation."

On this proposition of law, on the other hand, Mr. Justice Seaman says:

"The general rule, for which the appellants contend—that the family surname is 'incapable of exclusive appropriation by anyone, as against others of the same name who are using it legitimately in their own business'—is too well settled to require citation or review of the authorities. But the exceptions above mentioned, which makes the use illegitimate, are equally well settled, and we are of opinion that the general rule is not applicable to the trade name 'Hall' thus applied to the product of the new corporation and that the use was both fraudulent and in derogation of the rights acquired by the appellee under the conveyance by the original Hall corporation. The fact that such conveyance was not executed by the Halls as individuals cannot absolve them from the obligations of a contract made in the corporate name wherein they were individually the beneficiaries. As stated in *McKinley* v. *Wheeler*, 130 U. S., 630, 636, 'the court, when necessary, will look beyond the name of a corporation to the individuals whom it represents.' See opinion of Judge Baker, speaking for this court, in *Siemens-Halske Electric Co.* v. *Duncan Electric Mfg. Co. et al.*, decided October 3, 1905. The corporate form of the transfer will not be permitted, 'to distort or hide the truth.' (*Anthony* v. *American Glucose Co.*, 146 N. Y., 407, 413.) But a court of equity will treat the contract in conformity with its true meaning."

It thus appears that on a very important legal propo-

sition and upon a question of gravity and importance, the two learned courts of appeal are utterly at variance, one holding the stockholders individually bound by the corporate act; the other, denying the corporate act bound the individual stockholders. We believe it is necessary for this court in the interest of uniformity of decision to issue the writ of *certiorari* and to determine which proposition of law is sound and to be followed as law.

It must be conceded that the decision complained of is predicated upon the statement that the Hall Brothers "participated" or were in reality or in equity "parties to the conveyance." This we think we have shown is error, legally speaking, and that, as a matter of fact, they did not contract personally and, as a matter of law, are not bound. Indeed it is by inference, at any rate, admitted in the opinion of the learned Court of Appeals for the Seventh Circuit, that in the absence of such contract relations between Herring-Hall-Marvin Safe Company and the Messrs. Hall, the decree would have been too broad as entered and would have to be modified, but that owing to the fact that the corporation of which the Messrs. Hall were stockholders, had sold, bargained and granted the good will of the selling corporation, they were personally bound to refrain from ever using that name in a competitive business or designating safes or vaults of their product by any corporate name of which the word "Hall" was a part.

For purposes of remedy, courts will, when necessary, look through the corporation to the stockholders. With questions of contract, courts always consider the corporation and its stockholders as wholly distinct.

The contract in this case as it must be conceded, was made by the corporation. It does not convey, or purport to convey, the individual rights of any stockholder, either to go into the like business or to use the family name in that business. The theory upon which the decision is predicated, is that by assenting to the making of the contract by the corporation, each stockholder became a personal party to it. The corporation agreed that it would not thereafter engage in the safe business, but by so doing the stockholders did not so agree. Assent to corporate action must not be confounded with a contract for personal action. In addition to the cases referred to by Mr. Justice Severens in his opinion, we cite *Bank of Augusta* v. *Earle,* 13 Peters, 518, and quote therefrom the language of Mr. Chief Justice Taney:

"Whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter and not the contract of the individual members."

It must be constantly borne in mind that there is no complaint as to that part of the decree enjoining the Illinois corporation from continuing business by that title,—(that has already been complied with),—but that The Hall's Safe Company, the Ohio corporation, and your petitioner, its sales agent and dealer, and anyone succeeding to him, are prevented from doing in Chicago and the territory covered by the Seventh Circuit, what is judicially sanctioned elsewhere and expressly authorized to be done under prescribed conditions not at all onerous or difficult, by the decision of the Court of Appeals for the Sixth Circuit.

We make no point upon the fact that because the

all's Safe Company was not a party to the suit, e learned Court of Appeals for the Seventh Circuit ould not have adjudicated anything concerning it, that is too simple a proposition to merit discus- on. But it is worthy of note, that if petitioner prohibited from selling the product of the Hall's afe Company, as such, under any circumstances, in- nctive relief of the same drastic character could obtained against anyone who should seek to be- me the selling agents of the Hall's Safe Company, dealers in its products within the limits of the Sev- th Circuit.

Furthermore, it is a question of very great com- ercial importance for the trading public to under- and, and it is important that there should be no versity or contrariety of opinion on the subject of nfair trade or unfair competition such as will in- itably exist if both these decrees and decisions are lowed to stand. We believe it unnecessary to refer any case other than those already referred to on e general subject of unfair trade and competition. his court has so recently reviewed all of these cases *Howe Scale Company* v. *Wyckoff, Seamans & Bene- ct, supra,* that it would entail upon the court un- ecessary labor to again cite the cases there dis- ussed.

We submit, in conclusion, that a question of great oment and gravity is subject to opposite ruling by vo distinguished courts of great learning and ability. ne of these decisions must be correct; both cannot , nor can they be so reconciled as to avoid misappre- ension, doubt and confusion. No examination of

the evidence is necessary because both courts agree that the only contract was the corporate contract. The facts are not disputed. It is not claimed that the Halls executed any contract personally, except those restrictive covenants to continue only during their period of service with the Herring-Hall Company and from which they were expressly released when they left that company and before they organized Hall's Safe Company, the present Cincinnati company; but it is held by one court and denied by the other, that because they and their brothers and family were stockholders in the corporation which conveyed its assets and good will and they thus profited in the distribution of the purchase price—because of that fact alone—they are bound to conduct a business in which they have been engaged for their entire lives, and which is the only business which they know, without the use of the family name they bear, which in law, in the absence of contract, they have a perfect right to use in all legitimate ways.

Whatever rights and obligations might, in the absence of express contract, have been implied in law, from the relations of the two Halls to the old Hall Company, the sale by that company to the Herring-Hall Company, and the connection of the Halls with the latter company, the parties saw fit to enter into express written contracts; and these contracts must be taken as the measure of their relative rights and duties, upon the familiar principle that where parties enter into an express contract touching a certain matter, this must be regarded as embodying their agreement in its full extent, and no further or other contract can be raised by implication of law.

It is not claimed nor suggested that either the old Hall Company, nor the Halls individually did not fully, fairly and exactly perform their several and respective agreements in this regard. The learned Court of Appeals below, therefore, if so much may be said, with deference, errs in referring to this case as one in which the element of contract cuts any figure.

It is thought the writ should issue in accordance with the prayer of the petition. The opinion of the Court of Appeals for the Sixth Circuit in the Cincinnati case follows.

Respectfully submitted.

GEORGE P. MERRICK,
S. S. GREGORY,
Counsel for Petitioners.

No. 1494.

UNITED STATES CIRCUIT COURT OF APPEALS,

Sixth Circuit.

Hall's Safe Company, Edward C. Hall, William H. Hall, and Charles O. Hall, *Appellants*,
vs.
Herring-Hall-Marvin Safe Company, *Appellee.*

} Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Submitted April 4, 1906.

Decided June 5, 1906.

Before LURTON, SEVERENS and RICHARDS, Circuit Judges.

SEVERENS, Circuit Judge, delivered the opinion of the court.

The parties to this controversy are engaged in the business of manufacturing and selling safes. The complainant is a corporation organized under the laws of New Jersey. The defendant, The Hall's Safe Company, is an Ohio corporation, and the other defendants are citizens of that state. The bill was filed for the purpose of obtaining an injunction restraining the defendants from carrying on the business of manufacturing or selling fire proof, or burglar proof safes or vaults under the name of "The Hall's Safe Company,"

or under any other trade name substantially or essentially the same and calculated to deceive the public or intending purchasers into the belief that they are dealing with the complainant, or with the establishment founded by Joseph C. Hall and carried on by complainant, when they are dealing with the defendants, and from advertising their products as "Hall's Safes" and from marking them with that name; and for the recovery of profits and damages already lost and suffered by the complainant from acts of the like character. And there was a prayer for general relief.

The facts, about which there is not much controversy, are these: From about the year 1847 to 1867, one Joseph L. Hall had, in successive co-partnerships with other persons, been engaged at Cincinnati, Ohio, in the manufacture and sale of fire and burglar proof safes. In this business he had been the principal and managing member of his firms. In the latter year (1867) he with other persons organized a corporation under the laws of Ohio by the name of "Hall's Safe & Lock Company" for the purpose of carrying on the same business. Its factory and principal office were located at Cincinnati, and its business of selling safes extended throughout the United States and into foreign countries. Its safes were known as "Hall's Safes" and "Hall's Standard Safes," and certain styles of them were marked "Hall's Standard Safes," and the safes had a good reputation. In March, 1889, the said Joseph L. Hall, who was at that time the principal stockholder in the corporation last mentioned died. His sons, Edward C., William H. and Charles O. Hall, were also stockholders. The first two became successively presidents of the corporation. The stock

of Joseph L. Hall continued part of his estate and the business went on as before until May 4, 1892, when the corporation sold to the Herring-Hall-Marvin Company, a New Jersey corporation, all its "real estate and leasehold interests, tools, machinery, fixtures, merchandise, trade marks, trade names and good will"; and the Hall's Safe & Lock Company covenanted and agreed that it would close up its affairs and be dissolved, and would not in the future engage or continue in said business. This sale and agreement was assented to by the above named sons of Joseph L. Hall, who are the individuals made defendants in this cause. Edward C. Hall and William H. Hall at or about the date of the transfer became stockholders, (as we must suppose) directors, and respectively president and treasurer of the Herring-Hall-Marvin Company, at stated salaries agreed upon at the time of said transfer. But in 1895, these persons were deposed from their offices and their salaries reduced, and on August 1, 1896, they resigned their offices as directors. Their resignations were accepted, and they withdrew from the company. At the time when these parties became associated with the Herring-Hall-Marvin Company a written agreement with that company was entered into by each of them, which after stating the terms of their employment contained the following stipulation:

"And in consideration as aforesaid, I, the said Edward C. Hall (in the other contract, William H. Hall) do hereby covenant, promise and agree that I will not, so long as the Herring-Hall-Marvin Company may desire to retain my services as above, engage, either in the state of Ohio, or in the state of New Jersey, or in any of the states east of the Mississippi river, in

the business of manufacturing, selling buying or dealing in fire or burglar proof vaults and safes, or in any business or occupation such as the said corporation known as the Hall's Safe & Lock Company has heretofore been engaged in, or such as the Herring-Hall-Marvin Company is authorized or empowered to engage in, or in any other business which will or may compete or interfere in any manner with the business of the said Herring-Hall-Marvin Company."

In September, 1896, Edward C. Hall, William H. Hall, Charles O. Hall and other persons organized a corporation under the laws of Ohio, by the name of "The Hall Safe Company," the corporate defendant herein, and this company shortly thereafter went into the business of manufacturing and selling safes. A bill in equity was soon after filed in the Circuit Court of the United States against the new company by the Herring-Hall-Marvin Company complaining that the former was infringing its trade and good will and praying for an injunction. While that suit was pending, the Herring-Hall-Marvin Company became insolvent and a receiver was appointed. A new corporation was organized in New Jersey, the complainant in this suit, an order of the court for a sale of the assets of the old company was obtained and the new company became the purchaser in December, 1900, by a deed which purported to convey to the complainant all the real estate, personal property, manufacturing plant tools, machinery, merchandise, assets, franchises, property and good will of the Herring-Hall-Marvin Company. The bill in that case was dismissed upon a ground not now material, but without prejudice. Not long after the present bill was filed by the new company.

The *gravamen* of the complaint is that the defend-

ants invade and injure the good will and reputation of the complainant's business by the adoption of the corporate name of the defendant, "The Hall's Safe Company" and also by inducing the public through advertisements, circulars and other representations to believe that their safes are the product of the complainant's business. The defendants admit the acquisition by complainant of the properties, including the good will, of The Hall Safe & Lock Company, but claim that the individual defendants were not by the sale of the latter company deprived of the right to organize a new company which shall include their family name, and that the name of "Hall's Safe Co." is one which may lawfully be adopted. The defendants also filed a cross-bill in which they charge complainant with unfair conduct in seeking to divert the defendant's trade by false representations concerning it. The complaint of the cross-bill was that the defendant therein had some time prior to the commencement of this suit removed its manufacturing plant from Cincinnati to Dayton, Ohio, and had directed all mail addressed to the Hall Safe & Lock Company at Cincinnati to be forwarded to it at Dayton; and that it was holding itself out as the Hall Safe & Lock Company or Hall Safe & Lock Works, and the like, and was representing by its signs, advertisements, publications and stationery that it was the "Successor of Hall's Safe & Lock Co.," or was "Operating Hall's Safe & Lock Works," or was making and selling "Hall's Safes." And upon answer and replication evidence was taken upon those matters. The court below dismissed the cross-bill and decreed for the complainant upon the original bill, awarding an in-

junction. Complaint is made of the decree, that it is vague and uncertain in respect to the things which the defendants are restrained from doing, a matter to be recurred to later on.

Counsel for complainant contend that it is entitled to the relief it demands by virtue of the contract between it and the Hall Safe & Lock Company by which it acquired the property and good will of the latter company, and that its rights are not to be measured by the rules and principles which apply in the case of unfair competition in trade. And it is argued that this consideration distinguishes the case from that of *Howe Scale Co.* v. *Wyckoff, Seamans, etc.* 198 U. S., 118, where there was much discussion of the extent of the right of a person to use his own name in the conduct of his business, whether it be his private business or that of a corporate business in which he is associated with others, and reference is made to the language of the chief justice at page 140, where he says:

"We hold that in the absence of contract, fraud or estoppel, any man may use his own name, in all legitimate ways, and as the whole or a part of a corporate name."

Upon this contention it becomes important to determine what were and are the relations between the complainant and its predecessor in title and the several defendants. Undoubtedly the Herring-Hall-Marvin Company acquired by its contract of purchase with the Hall Safe & Lock Company all its physical properties and the good will which it had acquired in its business as well as the right to use such trade names as had been customarily used to identify its products.

It acquired also the right to require that the Hall Safe & Lock Company should go out of business, or, in substance, that it should not longer engage in business of the kind which it sold to the Herring-Hall-Marvin Company. But it is contended that the contract reaches beyond the corporation, the Hall Safe & Lock Company, and binds the defendants who were stockholders and officers of the corporation and prevents them and any corporation of which they may become stockholders and managers from doing what the Hall Safe & Lock Company could not do; and the principal reason for this contention is the fact that these individual defendants participated in the sale and as stockholders received its benefits. We are of opinion that this proposition cannot be sustained. The contract which the Herring-Hall-Marvin Company had was with the corporation only and not with its stockholders or officers. The officers who conducted the business of the selling company were not parties to the contract. It is a familiar rule that an agent, who having lawful authority makes a contract with another for a known principal, does not bind himself but his principal only.

Story on Agency, Section 261.
Mechem on Agency, Section 555.
Whitney v. *Wyman*, 101 U. S., 392.

And the officers of a private corporation in respect to their liability on contracts entered into by them in behalf of the corporation stand upon the same footing as agents of private individuals.

21 Am. & Eng. Encl. of Law, 879.
Whitney v. *Wyman, supra.*

If the purchaser desired to make the officers and agents of the selling corporation subject to the stipulations of the company in the contract of sale, it should have required their personal agreement to that effect.

The cases cited by counsel for the complainant to support their contention that the court may look through the form of corporate organization and fasten upon the stockholders a liability for the acts of the corporation, do not support such a doctrine, as applicable to contract relations. These are *State* v. *Standard Oil Company,* 49 Ohio St., 137; *McKinley* v. *Wheeler,* 130 U. S., 630, and *Anthony* v. *American Glucose Co.,* 140 N. Y., 407. They were all cases where for special purposes and in special circumstances the court held that it was competent and proper to regard the rights and duties of stockholders in corporations. None of them impugns the general rule above stated that in matters of contract, the officers and agents of a corporation are not bound personally by stipulations made by them in behalf of their principal. This rule is not affected by the circumstance that they are indirectly interested as stockholders in the contracts of their corporation. If it were so, it would break down all distinction between the corporate entity and its component parts. Counsel for the appellee have printed in their brief a recent decision, not yet published, of the Circuit Court of Appeals for the Seventh Circuit, in a case entitled *Hall's Safe & Lock Company and James W. Donnell* v. *Herring-Hall-Marvin Safe Co.* The suit was brought to restrain the defendant from using in its business the corporate name of the complainant as descriptive of its products. The de-

fendant filed a cross-bill to restrain the complainant in the original bill from using the name of the Hall's Safe & Lock Company in their business of making and selling safes, and from selling such safes as "Hall's Safes." It appears from the opinion that Donnell had organized an Illinois corporation, the co-defendant, with the name of the old Hall's Safe & Lock Company, having no member of the name of Hall, and was carrying on the safe business under that style at Chicago. The court holds, what we should suppose quite clear, that this assumption of the name of "Hall's Safe & Lock Company" was a fraudulent device to appropriate the good will of the old company to which the Herring-Hall-Marvin Safe Company had succeeded. It is also held that the defendant in the cross-bill should be restrained from selling safes which were not of the manufacture of the Herring-Hall-Marvin Company, as "Hall's Safes." It was claimed that the defendant in the cross-bill was selling under that name safes made by the Hall's Safe Company, the defendant here. It was only in this incidental way that the rights of the Halls were considered, and of course they could not be adjudged in that suit.

We do not think there is any substantial difference between the conclusion of that court upon the propriety of the use of the designation "Hall's Safes" and our own. We think it quite likely that court would have accepted the qualification that the use of such a designation in the business of the Halls would not be unlawful provided it was accompanied by explanatory matter showing that the product was their own and not that of the old company or its successors in business.

It is true that the learned judge who delivered the opinion said *arguendo,* that the court might look behind the corporation and find whether there were equities between the Herring-Hall-Marvin Company and the members of the Hall's Safe & Lock Company which would attach to the Hall's Safe Company, of which they are now members, and concluding there were such equities, proceeded to deduce the consequences. Without repeating what we have said upon this subject, we are constrained to think that the defendants, Hall, were not bound individually in law or in equity by the contract of their corporation.

The determination of the case must depend upon the application of other principles than such as would obtain if there were contractual relations between the parties in reference to the subject matter of the suit. When the Herring-Hall-Marvin Company purchased the Hall Safe & Lock Company's plant and business, it acquired the good will of the latter company, and this included the right to use the means of communicating to the public information that it had succeeded to the business and good will of its vendor and among these rights was that of using the trade names which had been employed in the business and by which the products thereof had been identified and known. And although the receiver's conveyance to the complainant did not in terms convey the right to use the old trade names, yet as it professed to convey all the assets of the Herring-Hall-Marvin Company, including the good will, we think it should be held that the purchaser acquired the right to designate its products by the same means as its predecessor in title had done. These rights it was entitled to enjoy exclusively. They were

its property. Neither these defendants or any other person could lawfully invade them. And we put the statement in this form to signify that in our opinion the defendants were precluded equally with, and not otherwise than, all other persons, because it seems to us that if there are no contractual relations between the parties, it is indifferent that the rights of the complainant are derived from the Hall Safe & Lock Company.

It would not be difficult to define in comparatively set terms the limits within which the parties to this controversy should be confined, were it not for the fact that these individual defendants bear the name which has long been associated with the complainant's products. Joseph L. Hall left five sons. of whom the defendants Hall were the eldest, and they were all bred to the father's business and have followed it from their youth. They undoubtedly have the right to pursue the occupation of manufacturing and selling safes and they have the right to use their own family name in the business and adopt all proper means of making it known to the public that the safes they offer are made by them; and they have the right to build up a business with a good will of its own. And if they choose to organize a corporation for that purpose, they have the right to use their family name in its title. But in doing all these things, neither these individual parties nor the corporation has the right to endeavor to lead the public into the belief that the safes they make are the product of the Hall Safe & Lock Company's successors in business. If, notwithstanding, the defendants conduct their business within these limits, it should

happen that from the similarity of names, and the kind of business, intending purchasers might sometimes fall into the mistake that the defendants were the successors of the Hall Safe & Lock Company, and were making the kind and quality of safes that were made by that company, the defendants would not be responsible therefor. If in the choice of a corporate name, one should be chosen which would be likely to catch the complainant's business, it would be necessary to accompany its use in the business of the company by explanatory statements which would prevent any misunderstanding; for such a choice without explanation would be *prima facie* evidence of unfair dealing.

The cases upon this subject have come to be very numerous, and it is unnecessary to canvass them. This has been done so recently in several decisions of the Supreme Court that we shall content ourselves with the statement of the controlling principles which we conceive to be now established referring for authority to,

Howe Scale Co. v. *Wyckoff, Seamans, etc.,* 198 U. S., 118.

Singer Mfg. Co. v. *June Mfg. Co.,* 163 U. S., 169.

Brown Chemical Co. v. *Meyer,* 139 U. S., 540.

Turton and Sons v. *Turton and Sons,* L. R., 42 Ch. Div., 128.

Reddaway v. *Benham,* L. R., Ap. Cas. (1896), 199.

The subject was also elaborately discussed, and the authorities cited, in the opinion of this court in *Royal*

Baking Powder Co. v. *Royal,* 122 Fed., 337; 58 C. C. A., 499, delivered by Judge Lurton.

Recurring to the facts of the present case the name adopted for the corporation was "Hall's Safe Company," a name so dangerously near to that of the "Hall's Safe & Lock Company" as to make it apparently necessary, to avoid mistake, that explanation should be made that it was not the same company or its successor in business. The testimony shows clearly enough that this had not been done; and although for a short time before the filing of the petition the defendant's practices had been mended in this regard, there was sufficient ground to apprehend the repetition of unauthorized pretensions by defendants to justify the complainant in invoking the power of the court to prevent them. Inasmuch as the individuals who are made defendants are not engaged in a business or proposing to engage in a business of their own prejudicial to the complainant, it would seem that the relief acquired should be the restraining of the corporation and its officers and agents from committing the unlawful acts complained of. It is not alleged in the bill that these defendants are personally committing or threatening to commit any injurious acts. They are apparently made parties because of the fact that they were large stockholders in the Hall Safe & Lock Company and had assented to the sale of its properties, and had been instrumental in the organization of the new company. But we do not think the latter fact alone subjected them to any liability, and if as we have held, they were not personally bound by the stipulations of the company, we perceive no sufficient ground for awarding an injunction against them.

This has often been held in suits brought for the infringement of patents, and the rule seems equally applicable to cases of the character before us.

Western Union Telg. Co. v. *Home Telg. Co.*, 85 Fed., 649.

Bowers v. *Atlantic, G. & P. Co.*, 104 Fed., 887.

Loomis-Manning Filter Co. v. *Manhattan Filter Co.*, 117 Fed. Rep., 325.

Greene v. *Buckley*, 120 Fed., 955.

But we think the facts justified an injunction against the Hall Safe Company, though not in the terms stated in the decree.

With respect to the defendants Hall, we think the decree should be reversed with directions to dismiss the bill.

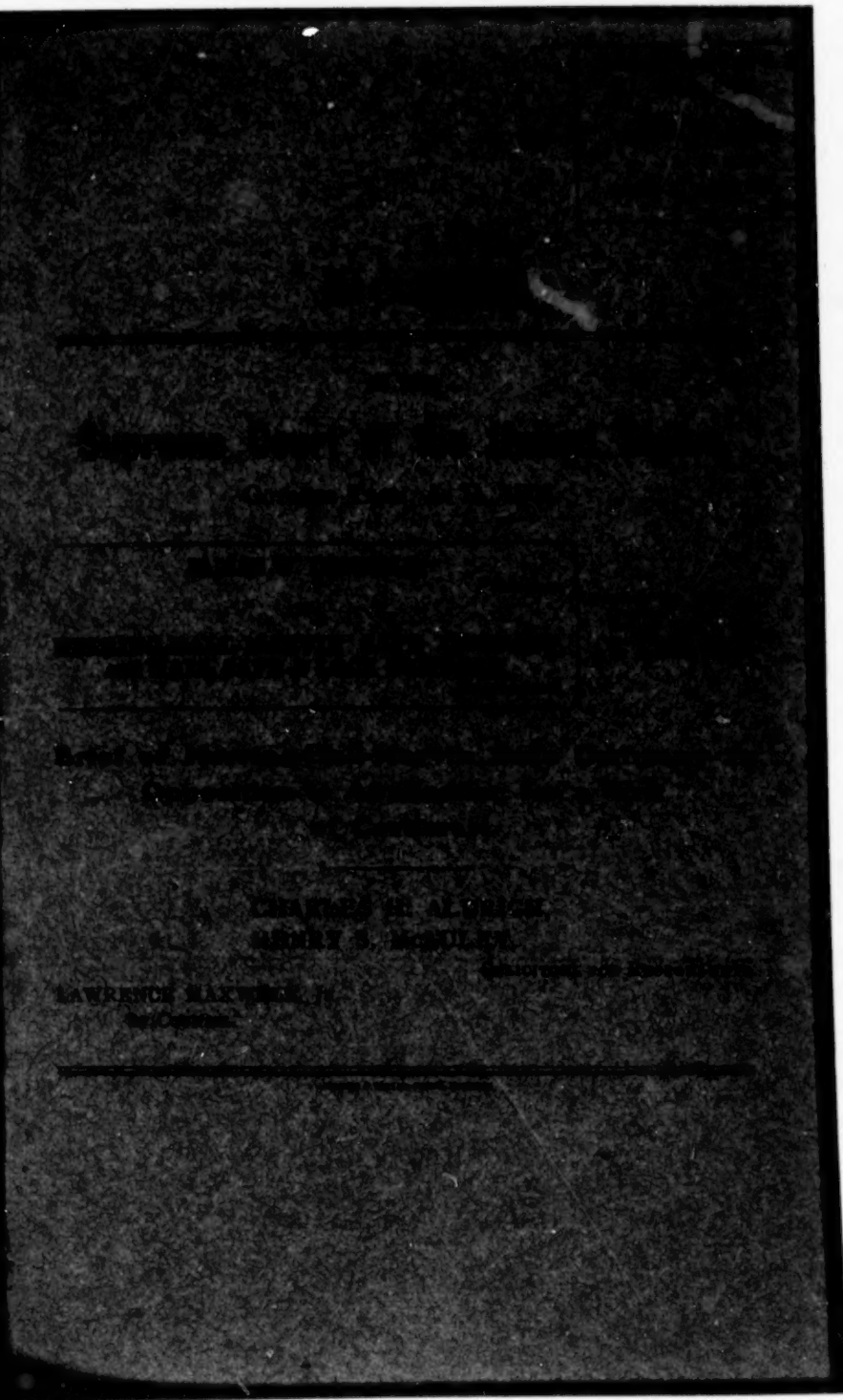
With respect to the defendant Hall's Safe Company the injunction should be modified. In lieu of the injunction ordered by the court below the following will be substituted:

The defendant the Hall's Safe Company, its servants, agents, officers and employes are perpetually enjoined from carrying on the safe or vault business in the name of the *Hall's Safe Company* or any other name having similarity to the name Hall's Safe and Lock Company, without also giving information to the public that it is not the business formerly carried on by the Hall's Safe and Lock Company; and from making, advertising or otherwise designating its safes and vaults as the products of the Hall's Safe and Lock Company or its successors in business, or pretending that it is carrying on the business started by Joseph

Hall and continued by the Hall's Safe and Lock Company; and from interfering in any manner with the exclusive right of the complainant to possess and enjoy the good will acquired by the Hall's Safe and Lock Company and from using the trade name of said last named company without at the same time so qualifying such trade name as to show that the trade name used is not the one formerly used to designate the products of the Hall's Safe and Lock Company.

In respect to the matter of the cross-bill, we think there is no substantial ground for complaint. For the reasons stated in the preceding opinion we are not prepared to say that the complainant in the original bill has exceeded its rights in endeavoring to maintain the benefits of its purchase from the Hall Safe & Lock Company; and we concur with the court below in holding that the cross-bill should be dismissed.

The costs of this appeal will be borne by the appellant, Hall's Safe Company, and the appellee, to be equally divided.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1906.

No.....

JAMES W. DONNELL, *Petitioner,* *vs.* HERRING-HALL-MARVIN SAFE COMPANY and HALL SAFE & LOCK COMPANY, *Respondents.*	Petition for Writ of Certiorari to the United States Circuit Court of Appeals for Seventh Circuit.

Brief of Herring-Hall-Marvin Safe Company in Opposition to Application for a Writ of Certiorari.

STATEMENT OF FACTS.

The record discloses many facts not fully set forth in the petition herein, which doubtless had a bearing upon the decision reached by the Court of Appeals in the Seventh Circuit, and to which we ask the court's attention.

In the original bill filed by Mr. Donnell's company, The Hall Safe and Lock Company, an Illinois corporation, the history of the business of manufacturing "Hall's Safes" from the year 1854 to the date of the filing of the bill was set forth substantially as appears in the petition herein. It was there

averred, however (Rec., 6), that the family name "Hall" had always been connected with the business and product throughout the entire period of more than fifty years, and that by reason of such long business experience and use it had acquired and enjoyed the highest reputation in the safe business; "that safes so manufactured and labeled are known to the trade and to the public as safes of the highest type of construction, durability, efficiency and character," etc. In this bill there was no mention of the fact that the original business founded by Joseph L. Hall in 1847, instead of 1854, as averred therein, and which from 1867 was carried on at or near Cincinnati by an Ohio corporation known as Hall's Safe & Lock Company, had been sold and the title thereto acquired through *mesne* conveyances by the present Herring-Hall-Marvin Safe Company. In the original bill, which was verified by the present petitioner, as president of the Illinois corporation, it was averred (Rec. 6):

"That the Hall's Safe Company, an Ohio corporation, was organized by virtue of a charter of the State of Ohio on September 15, 1896, and is now and has been continuously since said date, engaged in the manufacture of safes described as and known to the public as Hall's safes, manufactured by The Hall's Safe Company.

"That said Herring-Hall-Marvin Safe Company, the defendant herein, is a corporation of the State of New Jersey, and became organized as such by virtue of a charter of said state in the year 1901.

"That since the incorporation of your orator it has been continuously engaged in and has advertised itself as engaged in the business of dealing in and selling the said the Hall's Safe Company's safes, safe vaults and deposit vaults, and has been engaged in and has advertised itself as manufacturers and dealers in Hall Safe & Lock Company's safe vaults and deposit vaults, and that your orator has been since its incorporation, engaged in such business as aforesaid at said Number 52 and 54 Wabash avenue in said City of Chicago, Illinois, and that by reason of such continued business and permanent location and by advertising itself as such dealer in said Hall's safes and safe material of its own manufacture, it has acquired a reputation well and firmly established in the trade and with the public and such reputation and good will is of the highest value and importance to your orator, and that by reason of its exclusive agency of the sale of said Hall's safes so made as aforesaid, and by reason of its long experience in the safe business, it has established for itself and for said safes so sold by it, a reputation for fair dealing in such products of very great value and from which your orator derives large profits in the prosecution of its said business."

The bill sets out the acts done and threatened by the Herring-Hall-Marvin Safe Company, in advertising itself as the successor to the original Hall's Safe & Lock Company, and in selling and offering for sale "Hall's Safes" and "Hall's Standard Safes." It was averred that the Illinois corporation had the exclusive agency and right (Rec., 5)

"to maintain an office and store room in the said City of Chicago for the sale of said Hall's safes, safe vaults and deposit vaults manufactured by the said The Hall's Safe Company of Cincinnati"; and that such use of the name by the New Jersey corporation (Rec., 8) "was and is unauthorized and was and is an unfair, improper and illegal use of your orator's corporate trade name and trade-mark and constitutes unfair competition in trade and tends to and is calculated and does confuse and deceive the public," etc.

An injunction was sought against such use.

Upon removal to the federal court the New Jersey corporation filed an answer and cross-bill, in which the history of the Hall's Safe business was fully set forth. It is averred that when the Hall's Safe and Lock Company sold its business in May, 1892 (Rec., 32), "it had the largest business of any safe manufacturer in the world," having not only a business throughout the United States, but also a large export trade in England, South America, Australia, China and Japan, and that its safes were everywhere known and advertised as "Hall's Safes," "Hall's Standard Safes."

This business was sold in May, 1892, to a New Jersey corporation known as Herring-Hall-Marvin Company, having a capital stock of $3,300,000. It appears from the bill of sale (Rec., 215) that the sale embraced all the property of the company of every nature and description, wherever situated, including "trade marks, patents rights, trade rights, good will," and that the business was (Rec., 217) "purchased and taken over by the parties of the

second part in all respects as a going concern." It was part of the arrangement that the Ohio corporation should surrender its charter and go into liquidation. (Rec., 218.)

The same property and rights were conveyed by Messrs. Cox and Segur on the same day to the New Jersey corporation. This company became insolvent and was taken as a going concern by its creditors and stockholders through the organization of the present Herring-Hall-Marvin Safe Company. (Rec., 33 and 222.)

Upon the trial of the cause under the issues thus formed, as to which party had the right to claim the succession to the original business founded by Joseph L. Hall and to advertise and sell the product known as "Hall's Safes," it appeared that Joseph L. Hall died March 10, 1889 (Rec., 235). The capital stock of the Ohio Hall's Safe and Lock Company was $375,000, of which Joseph L. Hall owned over $320,000, the balance of the stock was largely, if not entirely, owned by the children of Joseph L. Hall. The trustees of his estate were his widow, Sarah J. Hall, his son, Edward C. Hall, and his son-in-law, Richard T. Pullen. There were eleven living children of Joseph L. Hall at the time of his death, five boys and six girls. (Rec., 237.) The negotiations for the sale of the Hall's Safe and Lock Company business were carried on largely by E. C. Hall, assisted by R. T. Pullen, and their action was authorized by the stockholders of the company, as was the sale as subsequently made. (Rec., 243-244.) The Hall interest received $600,000 in cash and $700,000 of the common stock of the Herring-Hall-Marvin

Company. The Hall interest dominated the new combination, and by contract were to have the control of the corporation through having a majority of the board of directors. (Rec., 236.) Edward C. Hall became president, William H. Hall treasurer, and Richard T. Pullen secretary. The $700,000 stock received on this sale was, with the exception of a few shares, immediately distributed to the heirs of Joseph L. Hall. (Rec., 236-237.)

The Halls named continued as such officers until July, 1896, when their resignations were accepted to take effect August 1, 1896.

Upon the formation of the New Jersey corporation and its succession to the business of the Hall's Safe and Lock Company, contracts of employment were entered into with Edward C. Hall, William H. Hall, Richard T. Pullen, and perhaps others. (Rec., 237-238.) The one with William H. Hall is set out in the record (p. 280), and it is shown that the others were of like import, except the amount of compensation. (Rec., 238.) By these contracts the several parties covenanted "that he will not so long as the Herring-Hall-Marvin Safe Company may desire to retain his services engage either in the State of Ohio or State of New Jersey, or in any of the States east of the Mississippi River in the business of manufacturing, selling, buying or dealing in fire or burglar proof vaults or safes, or in any business or occupation such as the said corporation known as the Hall Safe & Lock Company has heretofore been engaged in, or such as the Herring-Hall-Marvin Safe Company is authorized or empowered to engage in, or in any other business which will or may

compete or interfere in any way with the business of the said Herring-Hall-Marvin Safe Company."

Upon severing their relations with the company in 1896 each received communications accepting the resignation tendered, and declaring "you are hereby fully released from any or all obligation to the company under the contract of May 4, 1892." (Rec., 282.) It is conceded that it was intended by this reference to refer to the contract of employment.

In behalf of the respondent, Herring-Hall-Marvin Safe Company, it was contended, and held by the Court of Appeals for the Seventh Circuit, that the Hall heirs, having participated as stockholders in a sale of the trade rights and good will of a long-established business in which their name had acquired a secondary meaning as applied to the product, were not at liberty to use that name as applied to a product of the same character in competition with the business for which they had been paid the sum of $1,300,000, and that the acceptance of the resignations of Edward C. Hall and William H. Hall with a release from their covenant not to engage in the safe business, was no more effective to restore to them the right to use the name "Hall" in connection with such business than to restore to them the factory and machinery also passing by the transfer of May 12, 1892. That while they were at liberty to engage in the sale and manufacture of safes and vault material, they were, through the sale aforesaid, required by every principle of fair dealing and honest conduct, to use some other name. It is for this result that we here contend.

We turn now to the relations of the petitioner and his corporations with the sale of "Hall's Safes."

As alleged in the petition, and shown by the record, the petitioner became selling agent at Chicago for the original Hall's Safe and Lock Company of Ohio, and so continued, with his associates, for that company and its successors until March, 1898. His firm from 1886 to 1898 was A. L. Deane & Co., and by their contract with the Hall's Safe & Lock Company of January 15, 1886, they made the following agreements (Rec., 71):

> "The party of the second part hereby agrees to buy of Hall's Safe & Lock Co. their goods at prices and terms above stated, and to occupy and do business in a store in Chicago, Illinois.
>
> "The said A. L. Deane & Co. further agree said store is to be subject to the approval of the party of the first part, as to location and appearance, the said A. L. Deane & Co. assuming all liabilities and risks of doing business in said store. The said A. L. Deane & Co. further agree to faithfully represent the goods manufactured by said Hall's Safe & Lock Co., keeping the name of the latter prominently before the public, so the identity of Hall's Safe & Lock Co. will not be lost in the business carried on by said A. L. Deane & Co.
>
> "The said A. L. Deane & Co. further agree and obligate themselves not to represent or sell safes, vault fronts, iron or steel work of any kind or character, or other articles in this line except those manufactured by Hall's Safe & Lock Co."

By the contract of June 23, 1890, the relations of A. L. Deane & Co. with the Ohio corporation were extended and arrangements made to consign goods to them. (Rec., 75.)

These contracts were abrogated as contracts in June, 1892, upon the organization of the Herring-Hall-Marvin Company, but, as the correspondence and testimony shows, the same relations were continued pending the execution of a new agreement (Rec., 276-277), which in fact never was executed. The relations were continued, as has been stated, until March, 1898, when A. L. Deane & Co. failed in business and went into the hands of a receiver. The petitioner here organized The Hall Safe and Lock Company in May, 1898, under the laws of Illinois, with a capital of $5,000, which has since been increased. The new company commenced business in the same store, using the same signs, and advertising as before the failure, and when they were still agents for Hall's Safes. In fact, as we shall see by the advertising and statements in the daily press and directories, this company sought to make the public and intending purchasers believe that it was the original Hall's Safe and Lock Company, and sold the only original and genuine Hall's safes, and that the safes sold by the Herring-Hall-Marvin Safe Company and its agents were imitations.

Mr. Donnell, in his present petition, says (p. 9): "Your petitioner does not now attempt to justify or explain this step (the incorporation of the Hall Safe and Lock Company) further than to say that the evidence in this record to some extent warrants the conclusion that the Herring-Hall Company for some time after its organization sold its product under its own name and not under the names of the several constituent companies out of which it was formed, and hence there was some ground for saying

that that company might be deemed in part at least to have abandoned the Hall name, except as a part of its corporate designation."

"Your petitioner is advised that the fact of the formation of this Illinois company is not otherwise material except in so far as it might be considered for the purpose of justifying some restrictions upon the right of petitioner to sell the product of the Hall's Safe Company, which would otherwise be wholly unwarranted."

Inasmuch as the petitioner's conduct and relations are by us deemed material upon the question as to his right to use this name and so advertise and represent his product, we feel it incumbent upon us to briefly direct the court's attention thereto.

The court will note that the only difference between the names of the original Ohio corporation and the Illinois corporation consisted in the omission by Mr. Donnell of the apostrophe and letter "s" from the word "Hall.".

In the conduct of the business through so many years it seems that letters came to the place of business addressed to the Hall's Safe and Lock Company. In other words, A. L. Deane & Company had been so long identified with this company's product and had kept the company's name so prominently before the public, as they were required to do by the terms of their contract, that mail came to their place of business addressed to the corporation. There must have been many such letters, as Mr. Donnell testified on his direct examination as follows (Rec., 90):

> "A. I asked the Hall boys if they had any objection to our using the names. I told them

we had got a great many inquiries from advertisements in the papers connected with the Hall people for a number of years and by mail; they kept coming in all the time, and I thought if we would organize the Hall Safe & Lock Company, why, I could get my mail without any trouble, as the mail at the postoffice was stopped one day—at least, it wasn't stopped, but we were questioned as to whether it belonged to us or not, and he said he had no objection, but we had better see his attorney to see whether we could organize or not; so we saw his attorney, and he told me they had surrendered their charter, had gone into liquidation, and we were at perfect liberty to organize under the name Hall Safe & Lock Company.

"Q. Why did you organize under that name?

"A. More to get my mail than anything else. It would have been an advantage to me if I had organized the Donnell Safe & Lock Company, I think."

What more complete admission could there be that the purpose of the organization was dishonest as charged? The attempt to escape this admission on cross-examination leaves a very unpleasant impression as to the candor of this witness and at the same time emphasizes the wrongful purpose of the organization. He testified (Rec., 103-104):

"Q. And it was for the purpose of getting that mail that you say you organized the corporation?

"A. More than anything else, yes, sir.

"Q. I believe there has been some controversy with the postoffice authorities on that subject, has there not?

"A. Yes, sir.

"Q. A considerable controversy, wasn't there?

"A. No, not very much. They knew me as

getting the mail there for a good number of years and they thought I was entitled to it, and they asked me what I would do about it, and they said that they would still continue to deliver it until the court ordered them to do otherwise.

"Q. When did that controversy first arise?

"A. I think that was in 1897. I know it was in 1897 when we began to deal with the Hall boys.

"Q. And prior to the failure of A. L. Deane & Company?

"A. Yes, sir, I think it was.

"Q. The people at Cincinnati, representing the interests of the cross-complainants in this case, made some objection to your getting mail thus addressed, did they not?

"A. Not to us; to the postoffice authorities.

"Q. To the postoffice authorities?

"A. Yes.

"Q. That initiated the controversy, did it not?

"A. Certainly.

"Q. Did you have any correspondence with the post-office authorities upon that subject?

"A. No, I don't think I did. I went down and I saw the postmaster myself.

"Q. How often did that question arise?

"A. Once, I think, only.

"Q. I believe it was transferred to Washington, was it not?

"A. No, sir; we never heard from Washington at all. They recognized me as the proper person for the Hall mail, when we were A. L. Deane & Company.

"Q. Prior to the formation of the corporation?

"A. Yes, sir; we always got that mail. We have the books back—we are the only ones that know the business in relation to the Hall safes up here, since 1874. Nobody knows anything about this business but us. Nobody to-day knows anything about it."

(Rec., 132):

"Q. And people go into your store expecting to find the Hall's safes?

"A. They come in there to buy second-hand safes, but most usually Hall's safes.

"Q. Hall's safes?

"A. Yes, sir.

"Q. And the fact that the Herring-Hall-Marvin Company established a store at the corner of Dearborn and Lake streets, with such signs as they have up there, you think would confuse the public, because people who are seeking Hall's safes might go in there?

"A. I know it confuses the public in this way: they have been in there and they have come over to my store and told me that they went in there thinking it was the Hall Safe & Lock Company that they had previously dealt with, and that while they were in there they tried to corrupt their minds as to the safes the Hall Safe & Lock Company represented, as to the Hall safes that they sold."

(Rec., 138-139):

"Q. What was said between you and the Halls with reference to the organization of this corporation?

"A. We asked them if they had any objection to using their name of Hall and asked them what they thought about the legality of organizing. They said the Hall Safe & Lock Company had surrendered their charter and gone into liquidation, and Mr. Deane and myself, after consulting with our lawyers, thought that we were perfectly safe in commencing a new business, under a new name.

"Q. Why did you need to confer with the Halls about this subject?

"A. Well, I had been with them for years; I knew that they were going to succeed in their business, because they were practical safe men, and I intended to stay with them. We were friends and always had been.

"Q. But you could stay with them without organizing a corporation of that name in this city?

"A. Oh, yes, I could have stayed with them under any name, but at the same time I thought it was their name and it was no more than right for me to ask them if it would be agreeable to them. We may not have sold their safes. They may have taken their agency away from us, which would have been very embarrassing.

"Q. They could have given you permission to use their name without consulting a lawyer. Why was it necessary to consult a lawyer?

"A. We wanted to find out whether we had a right to organize. We didn't know whether the charter had been surrendered properly.

"Q. What, if anything, was said about the attitude of the Herring-Hall-Marvin Company, with reference to the use of that name?

"A. Nothing was ever said to me at all about that. I never knew anything about it."

On the same afternoon he testified (Rec., 142):

"Q. Did they tell you or write to you that they had been reinvested with the right to use the name Hall?

"A. No, sir.

"Q. You took the opinion of lawyers on that subject?

"A. No. They said they never sold the name Hall out to them; they simply sold their factory and machinery, and as long as they stayed with them they couldn't make safes, but when they left them they were at perfect liberty to do so.

"Q. To use the name of Hall?

"A. Yes, sir; they didn't sell their name to them at all.

"Q. When did they tell you that?

"A. When they went into business.

"Q. The present Hall's Safe Company?

"A. There was a suit against the Hall Safe

Company some years ago down there, and I was interested to know what was in it, at that time we used to discuss it quite frequently, and this information was elicited at that time. The Herring-Hall-Marvin Company, I think, started the first litigation with them some seven or eight years ago.

"Q. Before the formation of your corporation, wasn't it?

"A. Yes, sir.

"Q. You knew of it about the time that it was started?

"A. Yes, sir.

"Q. Discussed it with the Hall boys from time to time?

"A. Yes; every time I would see them I would ask them how they were getting along with their suit."

The court will notice that this is a direct contradiction of his former testimony that the witness did not know about the claims of Herring-Hall-Marvin Safe Company's predecessor. It will also be remembered that both of the Halls testified that they never knew about the formation of the Hall Safe & Lock Company of Illinois until after its organization.

The attempt of this witness to escape from the averments of his sworn bill is the best indication of his motives and reliability as a witness. The court's particular attention is called to his testimony contained in the record at pages 111-117. He says, on page 112, that he did not value the name of Hall at anything. On page 113 he says that the word Hall is valuable because the present Hall people are well known in the safe trade as good safe makers, and that it has no other value. On page 114 that the name is of a little value to him. On page 115 he

does not think that any one could tell how much benefit the name is, and admits that when he signed the bill he thought it was a source of great profit to him and doesn't now (at the time of the examination) consider it a great mistake.

In 1903 petitioner advertised in the Chicago Business Directory as follows: "Hall's Safe & Lock Company, largest manufacturers of safes, vaults &c in the world. 52-54 Wabash Avenue. Telephone Central 4517" (Rec., 120). On page 119 he testifies that at the time the bill was filed he employed about twenty-five men, on page 120 that he was not the largest manufacturer of safes in the world, that they used to advertise the old Hall's Safe & Lock Company that way and continued the same advertisement as applying to the puny Illinois corporation formed in 1898.

The advertisement constantly appearing in the daily papers of Chicago prior to, and even after, the commencement of this litigation is likewise conclusive evidence that the petitioner was fraudulent in his every move. That advertisement was as follows (Rec., 121): "Caution. The only safes made by the Halls are sold in Chicago at the old stand, 52-54 Wabash Avenue. Beware of imitations."

Mr. Donnell's explanation of this advertisement would be laughable if we could forget that he was under oath and is asking a court of justice to believe him. (Rec., 123, 124.)

What further proof of petitioner's fraudulent motives and bad faith is necessary? And yet the story which Donnell unconsciously tells of himself and his

companies is corroborated by the testimony of other witnesses. George T. Trumbull testified that he was with Mr. Donnell and A. L. Deane, as bookkeeper, cashier and salesman, from 1884 to the date of the failure in 1898 (Rec., 355); that prior to the organization of the Hall Safe & Lock Company by Messrs. Deane and Donnell he was asked to join with them, and that they stated that it was their belief that the Herring-Hall-Marvin Company would cease to exist, and that the time was opportune to organize the business under the name of Hall Safe & Lock Company, and that great value would come through the use of that name. (Rec., 356, 357.) George H. Brooks testified that he was connected with A. L. Deane & Company from 1891 to about 1896, and in 1898 was engaged by the Hall Safe & Lock Company of Illinois as a salesman; that Mr. Donnell instructed him in making sales to represent that it was the original Hall Safe & Lock Company. (Rec., 384, 385.) Donnell contradicts both of these witnesses, but as he is so frequently in conflict with himself and with the Halls upon material facts, as well as with the record made contemporaneously with the acts denied, and as he himself did so represent by his conduct and advertisements, not much importance can be attached to his denial.

No better description of petitioner's company, The Hall Safe and Lock Company, can be given than is contained in the language of the Court of Appeals, Seventh Circuit, in the case of *Peck Bros. & Co.* v. *Peck Bros. Co.*, 113 Fed., 296: "Upon the evidence in this case, we think we are warranted in saying of this defendant, as we had occasion to say of an-

other corporation under circumstances not dissimilar, that 'it was conceived in sin and brought forth in iniquity, that wrong attended at its birth, and that fraud stood sponsor at its christening, imposing upon the corporate child a name to which it was not entitled, and which it had no right to bear.' "

The original bill filed in behalf of the Illinois corporation was dismissed for want of equity, and cross-complainants were given the relief asked, which was affirmed by the Circuit Court of Appeals.

It may be material to add that both Edward C. Hall (Rec., 342-343, 348), and William H. Hall (Rec., 302), denied that they gave any permission to use the "Hall" name, or had any knowledge of its use until after the organization of the Illinois corporation.

It will be seen that they flatly contradict Mr. Donnell's statements (Rec., 159), under such circumstances as leave no opportunity to say of Mr. Donnell's testimony that he was mistaken.

BRIEF OF AUTHORITIES.

I.

IN THE ABSENCE OF CONTRACT FRAUD OR ESTOPPEL ANY MAN MAY USE HIS OWN NAME IN ALL LEGITIMATE WAYS AND AS A WHOLE OR PART OF A CORPORATE NAME.

Howe Scale Company v. *Wyckoff, Seamans & Benedict*, 198 U. S., 118.

II.

BUT WHERE A MAN HAS PARTED WITH THE RIGHT TO USE HIS NAME, OR IF HIS USE OF IT CONSTITUTES A FRAUD UPON ANOTHER HE WILL BE ENJOINED FROM SUCH USE.

Peck Bros. & Company v. *Peck Bros. Co.*, 113 Fed., 291.

Chickering et al. v. *Chickering & Sons*, 120 Fed., 69.

Royal Baking Powder Company v. *Royal*, 122 Fed., 337.

Singer Manufacturing Co. v. *June Manufacturing Co.*, 163 U. S., 169.

Same v. *Brent*, 163 U. S., 205.

Brown Chemical Co. v. *Meyer*, 139 U. S., 540.

The LePage Company v. *Russia Cement Co.*, 51 Fed., 941.

Russia Cement Company v. *LePage*, 147 Mass., 206.

Hoxie v. *Chaney*, 143 Mass., 592.

McLean v. *Fleming*, 96 U. S., 245.

Frazer v *Frazer Lubricator Company*, 121 Ill., 147.

Charles S. Higgins Co. v. *Higgins Soap Co.*, 144 N. Y., 462.

Levy v. *Walker*, L. R. 10 Ch. D., 436.

Garrett v. *T. H. Garrett & Co.*, 78 Fed., 472.

Meyers v. *Kalamazoo Buggy Co.*, 54 Mich., 215.

III.

WHEN A NAME HAS BEEN SO LONG IDENTIFIED WITH A BUSINESS AS TO ACQUIRE A SECONDARY MEANING, A SALE OF THAT BUSINESS AS A GOING CONCERN INCLUDING THE TRADE-RIGHTS AND GOOD-WILL IS EFFECTIVE TO PASS TO THE PURCHASER THE EXCLUSIVE RIGHT TO USE SUCH NAME IN THAT BUSINESS AS AGAINST ALL PARTIES PARTICIPATING IN THE SALE.

LePage Company v. *The Russia Cement Co.*, 51 Fed., 941.

Charles S. Higgins Co. v. *Higgins Soap Co.*, 144 N. Y., 462.

Russia Cement Co. v. *LePage*, 147 Mass., 206.

Menendez v. *Holt*, 128 U. S., 514.

Hoxie v. *Chaney*, 143 Mass., 592.

Brown Chemical Co. v. *Meyer*, 139 U. S., 548.

Richmond Company v. *Richmond*, 159 U. S., 293.

Hopkins Unfair Trade, pages 109-110.

Dodge Stationery Co. v. *Dodge*, 78 Pac., 879.

Myers v. *Kalamazoo Buggy Co.*, 54 Mich., 215.

IV.

IT IS NOT CONTENDED THAT STOCKHOLDERS ARE BOUND BY EVERY ACT OF THEIR CORPORATION. THEY ARE BOUND BY ACTS WHICH CAN ONLY BE TAKEN WITH THEIR ASSENT, AND TO WHICH THEY GIVE ASSENT BY AFFIRMATIVE VOTE OR ACQUIESCENCE, *e. g.*,

Increase of capital stock:

Sewall's Case, L. R., 3 Ch., 131.

Lane's Case, 1 De G., J. & S., 504.

Payson v. *Stoever*, 2 Dill., 427.

Execution of a mortgage:

Dimpfel v. *Ohio & M. Ry. Co.*, 9 Biss., 127.

Thomas v. *Citizens' Horse Ry. Co.*, 104 Ill., 462.

Acceptance of charter:

Demarest v. *Flack*, 128 N. Y., 205.

Commonwealth v. *Bakeman*, 105 Mass., 53.

Acceptance of amendment to charter from user:

City of Atlanta v. *Gate City, etc., Gas Co.*, 71 Ga., 106.

State v. *Sibley*, 25 Minn., 387.

Sumrall v. *Sun, etc. Ins. Co.*, 40 Mo., 27.

Lease of railroad:

St. Louis Railroad v. *Terre Haute R. R.*, 145 U. S., 393, 403.

Use of individual names in corporate name:

Holmes, Booth & Hayden v. *Holmes, Booth & Atwood Co.*, 37 Conn., 278, 294.

Richmond Nervine Co. v. *Richmond*, 159 U. S., 293.

Le Page Company v. *Russia Cement Co.*, 51 Fed., 941.

Cement Co. v. *Le Page*, 147 Mass., 206.
Penberthy Injector Co. v. *Lee* (Mich.), 78 N. W., 1074.

V.

WE CONCEDE THAT THE CORPORATION IS A DISTINCT ENTITY SEPARATE FROM ITS STOCKHOLDERS. BUT THE THEORY OF CORPORATE ENTITY IS NOT ALLOWED TO PROTECT FRAUDULENT CONDUCT, HIDE THE TRUTH OR DEFEAT THE ENDS OF PUBLIC OR PRIVATE JUSTICE.

As stated in 1 Purdy's Beach on Corporations, 6, "The effort of practical jurisdiction should be to regard it as a unit, or as a collection of persons according to the relation in which it acts in a given instance. As has been aptly said to this point, 'the shield will be either white or red, accordingly as it is viewed from the one side or the other.'"

In *State* v. *Standard Oil Co.*, 49 Ohio St., 137, 177, 178, the court points out that the general proposition that a corporation is a legal entity, existing separate and apart from the natural persons composing it, is a mere fiction, which when necessary to the ends of justice, must yield to the fact that it is an aggregation "of the real rights of actual men and women."

Northern Securities Co. v. *United States*, 193 U. S., 197, 310, 311 (and cases cited).
Anthony v. *American Glucose Co.*, 146 N. Y., 407.
McKinley v. *Wheeler*, 130 U. S., 630, 636.
Myers v. *Kalamazoo Buggy Co.*, 54 Mich., 215.

ARGUMENT.

In the argument of the question presented by the present petition, we shall confine ourselves to the discussion of the conclusion reached in this record. The record in the Court of Appeals for the Sixth Circuit is not yet before this court. When it shall be presented, it is believed that it will not be difficult to demonstrate that the decision in the Sixth Circuit was much too narrow and cannot be sustained.

This record shows that every Hall connected with the present Hall Safe Company, whose product petitioner desires to continue to sell as "Hall's Safes", participated in the sale of the property of the original Hall's Safe and Lock Company with its trade names and good will. They were shareholders in that company, and received the consideration paid therefor. It was a prosperous going business, and the court will take judicial notice of the fact that being such it could not have been sold if any stockholder had objected. As we have seen, the record shows that all assented. The same Halls, Edward C. and William H., who effected that sale, and were the chief officers and managers of the Herring-Hall-Marvin Company, are the chief officers and managers of the Hall Safe Company organized in September, 1896 (Rec., 287).

If these parties can be permitted to sell their product as "Hall's Safes", or authorize the peti-

tioner or his company, the Donnell Safe Company, which took over the business of the Illinois Hall Safe and Lock Company, to do so, they can destroy to a large extent the value of the property sold by them May 12, 1892. It would be as honest to ask the court to allow them to seize the plant and machinery sold.

This application seems to be founded upon a misunderstanding of the decision of this court in *Howe Scale Company* v. *Wyckoff, Seamans & Benedict*, 198 U. S., 118.

In that case the Remingtons, who were interested in the defendant corporation, had not participated in the sale to the complainants of the right to use the name of Remington as applied to typewriters; they were strangers to that contract. It does not appear that they ever had any connection with E. Remington & Sons. They were not children of E. Remington, who died in 1863, but of Samuel Remington (p. 121-122). The opinion states "that neither of them was paid for the use of his name, and neither of them had parted with the right to that use" 140). Nor was there any attempt by the defendants, to use improperly the business title and trade name of the plaintiff. On the contrary, the defendant company widely advertised that its machine was not the "Remington Standard Typewriter", and its catalogue declared:

> "We state, then, emphatically that this company has no connection whatever with that well-known and excellent machine, the Remington Standard Typewriter, and caution possible customers against confusing the 'Rem-Sho' with that machine or any other" (p. 124).

The two cases are only superficially similar. In this case there has been a sale, in which the parties whose name had become attached to the product, participated. In the Remnigton case there was no such sale. In this case the parties who manufacture the safe, and the agent selling it in Chicago have been, and are, guilty of dishonest and inequitable conduct. In the Remington case there was no such element.

In *Royal Baking Powder Co.* v. *Royal,* 122 Fed., 337, 346 (C. C. A., 6th Cir.), Lurton, J., said:

> "Where one has used his own name as a trade name, and then parted with it, he may, of course, be enjoined from using his name in that business. *Kidd* v. *Johnson,* 100 U. S., 617, 619; *Russia Cement Co.* v. *LePage,* 147 Mass., 206; *LePage Co.* v. *Russia Cement Co.,* 51 Fed., 941; *Hoxie* v. *Chaney,* 143 Mass., 592."

In *Levy* v. *Walker,* 10 Ch. D., 436, James, L. J., delivering the opinion of the Court of Appeals, said:

> "I think it right to say that a sale of the good will and business conveyed the right to the use of the partnership name as a description of the articles sold in that trade, and that that right is an exclusive right as against the person who sold it and an exclusive right as against all the world, so that no other person could represent himself as carrying on the same business."

In *Meyers* v. *Kalamazoo Buggy Company,* 54 Mich., 215, Cooley, C. J., in delivering the opinion of the court, said, at page 548:

> "We are satisfied that the Circuit Judge was right in his conclusion that the complainant has suffered serious wrong at the hands of these

defendants. He purchased of Lane and his wife for a consideration the adequacy of which is not disputed, all their interest 'in the property, assets, money, good will, and all other property, of every name and nature, in and to the firm of the Kalamazoo Wagon Company', and he was entitled to be put in possession of what he bought. The good will was a substantial part of the purchase, and purposely to take any steps to prevent his receiving the benefit of it was a wrong of the same nature as would have been the retention of some portion of tangible property belonging to the stock of the company. This good will is to be found in the probability that the old customers of the establishment, whose dealings with it have been satisfactory to them, will continue their custom and commend it to others; and if those customers were to be invited and enticed away from the old establishment, and especially if they were to be deceived into dealing with a new establishment under the belief that it was the old, the value of the business thus lost would be so much taken from the value of the good will which had been bought and paid for; and the invitation, enticement, or deception that caused the loss would constitute a wrongful appropriation of property."

Chas. S. Higgins Co. v. *Higgins Soap Co.*, 144 N. Y., 462, was an action by the Chas. S. Higgins Co. against The Higgins Soap Co., to enjoin the latter from carrying on business in that name. Chas. S. Higgins, formerly a stockholder and president of the plaintiff company, retired and established the defendant, Higgins Soap Co., and insisted upon the right to do so, on the ground that it was his family name. The court held that nobody could appropriate the business title or trade name of the old concern. They granted an injunction, saying:

"The inference seems irresistible that the defendant assumed its corporate name so that it could carry the impression that it was the manufacturer of 'Higgins Soap', so well known to the public."

In *Birmingham Vinegar Brewery Co.* v. *Liverpool Vinegar Co.*, 4 Times L. R., 613, one Holbrook, an employe of the Birmingham Vinegar Co., had allowed the company to use his name for twelve years as part of the title of their goods, "Holbrook's Worcestershire Sauce," "Holbrook's London Relish," "Holbrook's Pure Pickles." The court held that he was not allowed on leaving their service and entering that of the Liverpool Vinegar Co., to give the latter a right to use his name as part of the same titles, and enjoined them from so using it.

Petitioner's contention that the corporation, and not the individuals, was paid for the name Hall, is not supported by the cases cited. The law in this regard is well stated in *McKinley* v. *Wheeler*, 130 U. S., 630, 636:

"* * * * the court, when necessary, will look beyond the name of a corporation to the individuals whom it represents."

In *Anthony* v. *American Glucose Co.*, 146 N. Y., 407, the court said:

"We have of late refused to be always and utterly trammeled by the logic derived from corporate existence, where it only serves to distort or hide the truth."

These questions have been so often and so fully discussed in the opinions of this court and elsewhere, that it would be an affectation for us to quote at length from the decisions. Many of the

cases are cited in the second and third subdivisions of our brief of authorities, and will be found to fully sustain the propositions to which they are cited.

The Remington case fully recognizes that where the facts show "contract, fraud or estoppel", a person may not have the right to use his own name. When such conditions exist it is not a "legitimate" way to use one's own name. These elements were not present in *Burgess* v. *Burgess,* 3 De G. M. & G., 896; *Turton* v. *Turton,* L. R., 42, Chancery Div., 128; *Reddaway* v. *Banham,* L. R. App. cases, 1896, 199.

The petitioner practically admits that the decree against him was right so far as his own conduct was concerned, but asks that it may be modified so that he may accomplish practically the same result by selling the product of the Hall Safe Company. This is based upon the difference in opinion between the courts in the Sixth and Seventh Circuits upon the question whether the courts can look behind the corporate entity and fix upon the shareholders what the court in the Sixth Circuit mistakenly calls "a liability for the acts of the corporation." No such question was presented, or was involved. The sale of the good will and other property was by the corporation as an act of transfer to its successors. The participation of the Halls in such sale, and their receipt and enjoyment of the proceeds were acts done as individual shareholders, and were done with the covenant that the corporation should at once cease to exist, and the transfer of its business be a transfer of a going business.

All these acts looked to the end of the corporate entity, and required the individual assent of each and every shareholder. They are not acts to be done by the officers, or even by the officers with the approval of a board of directors. The question, therefore, is not the broad one stated by the court. It should be stated substantially as follows: Is a shareholder in a corporation bound by the act of his corporation which can only be done with his assent, and to which he in fact assents, and for which, upon the doing of the act, he receives a valuable consideration through the dissolution of the corporation, as required by the contract assented to by him?

So stated, there is no occasion for argument before this court. There are present the elements of contract, fraud and estoppel, mentioned in the Remington case.

This court cannot be expected to hold that a few persons holding all the stock of a corporation, using their name as a part of its corporate name, and whose product has come to be known by the family name throughout the entire commercial world, can, as a corporation, sell the property, trade names and good will of such corporation, at the same time agreeing to turn over the business as a going business, and surrender the charter of their corporation for a large consideration and then immediately resume business of the same character, in the same locality, and call their product by the same name. Questions of unfair trade and competition are questions of good faith and equitable conduct, and in courts of equity a person or combination of persons gain nothing by seeking inequita-

ble results through corporate organization. The ability of the courts to look through all manner of corporate organization to actual results has been too frequently illustrated within recent times in the anti-trust or combination in restraint of trade and other cases, to require extended discussion on this occasion.

Some of the authorities are referred to in the fourth and fifth propositions of the brief.

It may be added that this record shows from the evidence of the Halls themselves that the family name was adopted for commercial reasons and with the intention of retaking the good will sold in May, 1902. (Rec., 308, 351.)

We therefore respectfully submit that the petition for the writ of certiorari should be denied.

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Solicitors for Respondent Herring-Hall-Marvin Safe Company.

LAWRENCE MAXWELL, JR.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 409.

JAMES W. DONNELL, PETITIONER,

vs.

HERRING-HALL-MARVIN SAFE COMPANY AND HALL SAFE AND LOCK COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Reply Brief of Petitioner to Brief of Respondents in Opposition to Application for Writ of Certiorari.

It is not denied that there is a real and substantial diversity of opinion between the learned Circuit Court of Appeals below and the Circuit Court of Appeals for the Sixth Circuit in respect not merely to similar questions, but to identically the same question, nor that the legal question involved in this case is one of gravity and importance. Much space is taken up in respondents' brief with charges of fraud against the Illinois corporation, which with deference may be attributed to the purpose of obscuring or clouding the issues. All that is said on that subject in respondents' brief, we submit, is

wholly irrelevant. We have not and do not complain of the decree against the Illinois company, nor seek to show any error in the decree, so far as that company is concerned. That company seeks no relief here. The single issue is, Can petitioner be enjoined from selling, under proper restrictions, the product of Hall's Safe Company on the ground that that company has no right to use the name "Hall?" By the decision of the learned Circuit Court of Appeals for the Seventh Circuit the question is answered in the affirmative, and by the learned Court of Appeals for the Sixth Circuit in the negative. Moreover, the question relates to the manufacture and sale of exactly the same product by the same party. We deem it idle to cite cases to establish that where one has used his own name as a trade name and then parted with it he may be enjoined from using it. The Halls, however, never parted with their own name or their right to use it, except to the extent of their own express agreements, which they fully performed. The company in which they were stockholders agreed to go out of business, dissolve and surrender its charter, and did so (Record, pp. 218, 324, 325). The element of contract, therefore, is out of the case. Upon this important matter of fact and question of law the opinions in both circuits differ. Let us see by the record which learned court is correct on a pure question of fact. The corporation, "Hall's Safe and Lock Company," made and delivered its bill of sale, conveying its assets, including its good will (Rec., 215-218), and at the same time the Hall brothers and others entered into personal contracts of employment (Rec., 280). Both corporation and individuals, in good faith, as shown, carried out their respective agreements. The corporation ceased to do business, dissolved, and surrendered its charter. The Halls, as individuals, entered the employment of the vendee corporation, and remained therewith until discharged and released from their personal contracts. No individual or personal contract not to use their own family name was ever made by them. Hence no question of estoppel by con-

tract affecting them is involved. Counsel for respondents (page 25 of their brief) say: "In this case the parties who manufactured the safe, and the agent selling it in Chicago, have been, and are, guilty of dishonest and inequitable conduct." In so far as this refers to the incorporation of the Illinois company by petitioner Donnell, and the business attempted to be done by it, that issue is disposed of by the decree dismissing the bill of that company, not here questioned. It is not true that the Halls have been guilty of any conduct that can be justly or fairly characterized as dishonest or inequitable. It is perfectly apparent, and even obvious, that there is no breach of contract involved in this case, either by petitioner, Donnell, or by the Halls, and so the learned court below, with due deference, is speaking beside the question in referring to any supposed contract features in this case, for there are none. The learned Court of Appeals for the Sixth Circuit held if the purchaser (respondent Herring-Hall-Marvin Safe Company) desired to make the officers and agents of the selling corporation subject to the stipulations of the company in the contract of sale, it should have required their personal agreement to that effect (copy of Opinion of Mr. Justice Severens, Petitioner's Brief, p. 41). On the other hand, Mr. Justice Seaman, speaking for the learned Court of Appeals for the Seventh Circuit, says:

"The fact that such conveyance was not executed by the Halls as individuals cannot absolve them from the obligations of a contract made in the corporate name wherein they were individually the beneficiaries." (See p. 448, Transcript of Record.)

Under the one decision, then, the Halls, trading as the Hall's Safe Company, may under certain restrictions make and sell safes, using that name. This right is denied them, within at least the limits of the seventh circuit, by the decree here in question. The real issue here involved is, therefore, Can any one sell safes made by the Hall Safe Company,

labeled "Hall's Safe Company's safes," within the States of Indiana, Illinois, and Wisconsin? From so doing petitioner, his successors, agents, employees, etc., by the decree here questioned are enjoined. It is clear that if petitioner may not sell Hall's safes, none other but respondent Herring-Hall-Marvin Safe Company, its successors and agents, may. In other words, should any one attempt to sell the product of Hall's Safe Company in the territory mentioned he could be promptly enjoined.

It is suggested in respondents' brief that the record of the Court of Appeals for the Sixth Circuit is not yet before this court, but that when it shall be presented it will not be difficult to demonstrate that the decision of that court was much too narrow and cannot be sustained. In open court it was stated that a motion for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit, in the case of Herring-Hall-Marvin Safe Co., petitioner, *vs.* Hall's Safe Co., respondent, would be submitted on October 22d next in this court.

Assuming, then, that such an application for a writ of certiorari will be made for the purpose of reversing that decision, it may not be inappropriate to suggest that the correctness of that decision can be readily ascertained without and before such application. The decision is printed at the close of petitioner's brief. The governing or controlling facts in both cases are identical. The decisions of the two learned courts are utterly different and opposed to each other. The question is one of much gravity and importance. It is held in one circuit that stockholders are individually bound by a corporate sale, and the contrary is asserted in the other circuit. The ruling of the Court of Appeals for the Seventh Circuit was presented and duly considered by the Court of Appeals for the Sixth Circuit, and the holding by the seventh circuit was not only not followed, but disapproved by the learned Court of Appeals for the Sixth Circuit.

Replying to the suggestion that the conduct of the Illinois corporation may have had a bearing upon the decision

reached by the court below, and to which conduct so much space in respondents' brief is devoted, we beg to show from the opinion itself that it could have had no influence. We quote from the decision itself:

"Unless the rights of the appellee (respondent Herring-Hall-Marvin Safe Company) are exclusive in the trade name 'Hall' as applied to their safes and vaults—*irrespective of the just limitations in its use on the part of appellants, arising out of their prior trade relations with appellee*—it is obvious that the decree cannot be upheld without modification" (Record, p. 444).

We ask the indulgence of the court for the length of this reply brief, but have felt that the issue here is so clear and simple that it should not in anywise be obscured by anything which did not, as shown, have any bearing upon the decision, and which is wholly irrelevant to the question here necessary to be decided.

Respectfully submitted,

GEORGE PECK MERRICK.

S. S. GREGORY,

Counsel for Petitioners.

Office Supreme Court, U. S.
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No. 106.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

JAMES W. DONNELL,

Petitioner,

vs.

HERRING-HALL-MARVIN SAFE COMPANY and HALL SAFE AND LOCK COMPANY,

Respondents.

CERTIORARI.

Brief and Argument for Respondent, Herring-Hall-Marvin Safe Company.

CHARLES H. ALDRICH,
HENRY S. McAULEY,
SOLICITORS FOR RESPONDENT.

LAWRENCE MAXWELL, JR.,
OF COUNSEL.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

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JAMES W. DONNELL,
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HALL SAFE AND LOCK COMPANY,
Respondents.

CERTIORARI.

BRIEF AND ARGUMENT FOR RESPONDENT, HERRING-HALL-MARVIN SAFE COMPANY.

STATEMENT OF FACTS.

This cause was originally commenced in the Superior Court of Cook County, Illinois, by Hall Safe and Lock Company, a corporation organized May 7, 1898, under the laws of Illinois and having its principal office in Chicago, against Herring-Hall-Marvin Safe Company, a corporation of New Jersey, and was by the latter company removed to the Circuit Court below, where an answer was filed and a cross-bill, which made James W. Donnell, president of the original complainant, also a defendant. The cross-bill was answered by both the petitioner and

Hall Safe and Lock Company, and replications were filed. Subsequently the original bill was dismissed for want of equity, and the cause proceeded to a final hearing on the cross-bill and answers, and proof taken thereunder, whereupon a decree was entered, which provided that:

> "Hall Safe & Lock Company and James W. Donnell, its and their successors, assigns, servants, agents and employes of every name and description whatsoever, are enjoined from carrying on the safe and vault business in the name of Hall Safe & Lock Company, or any name of which the name 'Hall' is a part, and from marking their safes with any name of which the name 'Hall' is a part, and from advertising or offering safes or vaults for sale as 'Hall's safes,' or by any name of which the word 'Hall' is a part, except or unless the safes so offered shall have actually been made and manufactured by the original Hall's Safe & Lock Company, of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company."

Thereupon both Donnell and Hall Safe and Lock Company, of Illinois, prosecuted an appeal to the Circuit Court of Appeals for the Seventh Circuit, where the said decree was affirmed; whereupon the present application for *certiorari* was made on behalf of James W. Donnell alone.

In the original bill filed by Hall Safe and Lock Company a history of the business of manufacturing "Hall's Safes" from the year 1854 to the date of the filing of the bill was set forth substantially as appears in the petition herein. It was there averred, however (Rec., 4), that the family name "Hall" had always been connected with the busi-

ness and product throughout the entire period of more than fifty years, and that by reason of such long business experience and use it had acquired and enjoyed the highest reputation in the safe business; "that safes so manufactured and labeled are known to the trade and to the public as safes of the highest type of construction, durability, efficiency and character," etc. In this bill there was no mention of the fact that the original business founded by Joseph L. Hall in 1847, instead of 1854, as averred therein, and which from 1867 was carried on at or near Cincinnati by an Ohio corporation known as Hall's Safe & Lock Company, had been sold and the title thereto acquired through *mesne* conveyances by the present Herring-Hall-Marvin Safe Company. In the original bill, which was verified by the present petitioner, as president of the Illinois corporation, it was averred (Rec., 5):

"That the Hall's Safe Company, an Ohio corporation, was organized by virtue of a charter of the State of Ohio on September 15, 1896, and is now and has been continuously since said date, engaged in the manufacture of safes described as and known to the public as Hall's safes, manufactured by The Hall's Safe Company.

"That said Herring-Hall-Marvin Safe Company, the defendant herein, is a corporation of the State of New Jersey, and became organized as such by virtue of a charter of said state in the year 1901.

"That since the incorporation of your orator it has been continuously engaged in and has advertised itself as engaged in the business of dealing in and selling the said the Hall's Safe Company's

safes, safe vaults and deposit vaults, and has been engaged in and has advertised itself as manufacturers and dealers in Hall Safe & Lock Company's safe vaults and deposit vaults, and that your orator has been since its incorporation, engaged in such business as aforesaid at said Number 52 and 54 Wabash avenue in said City of Chicago, Illinois, and that by reason of such continued business and permanent location and by advertising itself as such dealer in said Hall's safes and safe material of its own manufacture, it has acquired a reputation well and firmly established in the trade and with the public and such reputation and good will is of the highest value and importance to your orator, and that by reason of its exclusive agency of the sale of said Hall's safes so made as aforesaid, and by reason of its long experience in the safe business, it has established for itself and for said safes so sold by it, a reputation for fair dealing in such products of very great value and from which your orator derives large profits in the prosecution of its said business."

The bill sets out the acts done and threatened by the Herring-Hall-Marvin Safe Company, in advertising itself as the successor to the original Hall's Safe & Lock Company, and in selling and offering for sale "Hall's Safes" and "Hall's Standard Safes." It was averred that the Illinois corporation had the exclusive agency and right (Rec., 4) "to maintain an office and store room in the said City of Chicago for the sale of said Hall's safes, safe vaults and safe deposit vaults manufactured by the said The Hall's Safe Company of Cincinnati;"

and that such use of the name by the New Jersey corporation "was and is unauthorized and was and is an unfair, improper and illegal use of your orator's corporate trade name and trade-mark and constitutes unfair competition in trade and tends to and is calculated and does confuse and deceive the public," etc. (Rec., 6.)

The answer and cross-bill of the respondent set forth fully the history of the Hall safe business. It is averred that when Hall's Safe and Lock Company sold its business in May, 1892 (Rec., 25), it had the largest business of any safe manufacturer in the world, having not only a business throughout the United States, but also a large export trade to England, South America, Australia, China and Japan, and that its safes were everywhere known and advertised as "Hall's Safes" and "Hall's Standard Safes."

This business was sold in May, 1892, to a New Jersey corporation known as Herring-Hall-Marvin Company, having a capital stock of $3,300,000. It appears from the bill of sale (Rec., 183) that the sale embraced all the property of the company of every nature and description, wherever situated, including "trade marks, patent rights, trade rights, good will," and that the business was (Rec., 185) "purchased and taken over by the parties of the second part in all respects as a going concern." It was part of the arrangement that the Ohio corporation should surrender its charter and go into liquidation. (Rec., 186.)

Herring-Hall-Marvin Company became insolvent and was taken over as a going concern by its credit-

ors and stockholders through the organization of Herring-Hall-Marvin Safe Company, the respondent herein (Rec., 26, 189), in 1900.

Upon the trial of the cause, under the issues thus formed, as to which party had the right to claim the succession of the original business founded by Joseph L. Hall and to advertise and sell the product known as "Hall's Safes," it appeared that Joseph L. Hall died in March, 1889. The capital stock of the Ohio Hall's Safe and Lock Company was $375,000, of which Joseph L. Hall owned $320,000 and his children the remaining $55,000. The trustees of his estate were his widow, Sarah J. Hall, his son, Edward C. Hall, and his son-in-law, Richard T. Pullen. There were eleven children of Joseph L. Hall at the time of his death, five sons and six daughters. The negotiations for the sale of Hall's Safe & Lock Company's business to Herring-Hall-Marvin Company were carried on by Edward C. Hall, with the assistance of Richard T. Pullen. These negotiations and the subsequent sale were ratified by the stockholders. (Rec., 207, 208.)

The Hall interest received $600,000 in cash and $700,000 of the common stock of Herring-Hall-Marvin Company. The Hall interest dominated the new combination, and by contract were to have the control of the corporation through having a majority of the board of directors. (Rec., 201.) Edward C. Hall became president, William H. Hall treasurer, and Richard T. Pullen secretary. The $700,000 stock received on this sale was, with the exception of a few shares, immediately distributed to the heirs of Joseph L. Hall. (Rec., 201.)

At the same time contracts of employment were entered into with Edward C. Hall, William H. Hall, Richard T. Pullen, and others. (Rec., 201-202.) The one with William H. Hall is set out in the record (p. 240), and it is shown that the others were of like import, except the amount of compensation. (Rec., 202.) By these contracts the several parties covenanted "that he will not so long as the Herring-Hall-Marvin Safe Company may desire to retain his services engage either in the State of Ohio or State of New Jersey, or in any of the states east of the Mississippi River in the business of manufacturing, selling, buying or dealing in fire or burglar proof vaults or safes, or in any business or occupation such as the said corporation known as the Hall Safe and Lock Company has heretofore been engaged in, or such as the Herring-Hall-Marvin Safe Company is authorized or empowered to engage in, or in any other business which will or may compete or interfere in any way with the business of the said Herring-Hall-Marvin Safe Company."

The contract of sale to Herring-Hall-Marvin Company was dated May 12, 1892. The Halls continued as officers until July, 1896, when their resignations were accepted, to take effect on August 1st of that year.

Upon severing their relations with the company each received a communication accepting the resignation tendered, and declaring "you are hereby fully released from any or all obligation to the company under the contract of May 4, 1892." (Rec., 241.) It is conceded that it was intended by this reference to refer to the contract of employment.

Two months later, William H. and E. C. Hall, and the other heirs, organized the Hall's Safe Company and proceeded to manufacture and sell safes and vaults under the trade name of "Hall's."

Early in 1897 a suit was commenced by Herring-Hall-Marvin Company against the Hall's Safe Company and the individual Halls to enjoin their unfair trade in the use of the name "Hall." Answers and replication were filed, but before final hearing the Herring-Hall--Marvin Company became insolvent. From the fall of 1897 until 1900, pending the receivership, no steps were taken in the cause, but in 1901 the respondent filed a supplemental bill alleging its succession to the interests of the Herring-Hall-Marvin Company, and praying the same relief as that prayed in the original bill. A demurrer was filed thereto, and subsequently the court held that respondent must proceed by original, and not by supplemental bill. Accordingly, an original bill was filed, and the record made thereon is now before this court on certiorari from the Circuit Court of Appeals for the Sixth Circuit, under the term No. 136.

In 1880 James W. Donnell, the petitioner herein, came to Chicago as sales manager for the Hall's Safe and Lock Company of Ohio (Rec., 53-4), in which capacity he continued until July, 1886. At this time the firm of A. L. Deane & Co., composed of A. L. Deane and the petitioner, was formed and entered into a contract with the Hall's Safe and Lock Company, dated January 15, 1886, agreeing, among other things:

"to buy of Hall's Safe and Lock Company their goods at prices and terms above stated, and to occupy and do business in a store in Chicago, Illinois."

"The said A. L. Deane & Co. further agree said store is to be subject to the approval of the party of the first part, as to location and appearance, the said A. L. Deane & Co. assuming all liabilities and risks of doing business in said store. The said A. L. Deane & Co. further agree to faithfully represent the goods manufactured by said Hall's Safe and Lock Company, keeping the name of the latter prominently before the public, so the identity of Hall's Safe and Lock Company will not be lost in the business carried on by said A. L. Deane & Co.

"The said A. L. Deane & Co. further agree and obligate themselves not to represent or sell safes, vault fronts, iron or steel work of any kind or character, or other articles in this line except those manufactured by Hall's Safe and Lock Company."

By the contract of June 23, 1890, the relations of A. L. Deane & Co. with the Ohio corporation were extended and arrangements made to consign goods to them. (Rec., 59.)

These contracts were cancelled in June, 1892, upon the organization of Herring-Hall-Marvin Company, but the same relations were continued, pending the execution of a new agreement. No new agreement was ever formally executed, but the relations were continued on the same basis until March, 1898, when A. L. Deane & Co. failed and went into the hands of a receiver. During this entire period the business of A. L. Deane & Co. was continued as it had been before the formation of Herring-Hall-Marvin Company. The large sign, "Hall's Safes,"

continued to occupy the entire front of the store on Wabash avenue, and the word "Hall's" was always kept prominently before the public, as had been required under the contract of 1886.

In May, 1898, the petitioner organized "The Hall Safe and Lock Company" under the laws of Illinois, with a capital of $5,000, which has since been increased. The only difference between the name of the original Ohio corporation and that of the Illinois company consisted in the omission by Mr. Donnell of the apostrophe and the letter *s* from the word Hall. The new company commenced business in the same store, 52-4 Wabash avenue, and used the same signs and advertisements which had been used by A. L. Deane & Co. before their failure, while the petitioner was the agent for Hall's safes. By advertisements and statements in the daily press and directories, the petitioner sought to make people and intending purchasers believe that his corporation was the original Hall's Safe and Lock Company and sold the original and genuine Hall's safes, and that the safes sold by Herring-Hall-Marvin Safe Company were imitations.

Mr. Donnell, in his present petition, says (p. 7): "Your petitioner does not now attempt to justify or explain this step (the incorporation of the Hall Safe and Lock Company) further than to say that the evidence in this record to some extent warrants the conclusion that the Herring-Hall Company for some time after its organization sold its product nader its own name and not under the names of the several constituent companies out of which it was formed, and hence there was some ground for say-

ing that that company might be deemed in part at least to have abandoned the Hall name, except as a a part of its corporate designation."

"Your petitioner is advised that the fact of the formation of this Illinois Company is not otherwise material except in so far as it might be considered for the purpose of justifying some restrictions upon the right of petitioner to sell the product of the Hall's Safe Company, which would otherwise be wholly unwarranted."

Inasmuch as the petitioner's conduct and relations are by us deemed material upon the question of his right to use this name and so advertise and represent his product, we have felt it incumbent upon us to briefly direct the court's attention thereto.

BRIEF OF AUTHORITIES.

I.

THE CORPORATION IS A DISTICT ENTITY SEPARATE FROM ITS STOCKHOLDERS. BUT THE THEORY OF CORPORATE ENTITY IS NOT ALLOWED TO PROTECT FRAUDULENT CONDUCT, HIDE THE TRUTH OR DEFEAT THE ENDS OF PUBLIC OR PRIVATE JUSTICE.

Northern Securities Co. v. *United States*, 193 U. S., 197.

Anthony v. *American Glucose Co.*, 146 N. Y., 407.

State v. *Standard Oil Co.*, 49 Ohio St., 137, 177.

McKinley v. *Wheeler*, 130 U. S., 630, 636.

Myers v. *Kalamazoo Buggy Co.*, 54 Mich., 215.

1 Purdy's Beach on Corporations, 6.

II.

STOCKHOLDERS ARE BOUND BY THOSE ACTS OF THEIR CORPORATION WHICH CAN ONLY BE TAKEN WITH THEIR ASSENT, AND TO WHICH THEY GIVE ASSENT BY AFFIRMATIVE VOTE OR ACQUIESCENCE, *e. g.:*

Sale of the entire assets of a solvent going concern:

Cook on Corporations, § 670, and cases cited.

Increase of capital stock:

Sewall's Case, L. R., 3 Ch., 131.

Lane's Case, 1 De G., J. & S., 504.

Payson v. *Stoever*, 2 Dill., 427.

Execution of a mortgage:

Dimpfel v. *Ohio & M. Ry. Co.*, 9 Biss., 127.

Thomas v. *Citizens' Horse Ry. Co.*, 104 Ill., 462.

Acceptance of charter:

Demarest v. *Flack*, 128 N. Y., 205.

Commonwealth v. *Bakeman*, 105 Mass., 53.

Acceptance of amendment to charter from user:

City of Atlanta v. *Gate City, etc., Gas Co.*, 71 Ga., 106.

State v. *Sibley*, 25 Minn., 387.

Sumrall v. *Sun, etc., Ins. Co.*, 40 Mo., 27.

Lease of railroad:

St. Louis Railroad v. *Terre Haute R. R.*, 145 U. S., 393, 403.

Use of individual names in corporate name:

Holmes, Booth & Hayden v. *Holmes, Booth & Atwood Co.*, 37 Conn., 278, 294.

Richmond Nervine Co. v. *Richmond*, 159 U. S., 293.

Le Page Company v. *Russia Cement Co.*, 51 Fed., 941.

Cement Co. v. *Le Page*, 147 Mass., 206.

Penberthy Injector Co. v. *Lee* (Mich.), 78 N. W., 1074.

III.

THE NAME "HALL" HAVING BEEN SO LONG IDENTIFIED WITH THE SAFE BUSINESS AS TO ACQUIRE A SECONDARY MEANING, THE SALE OF THAT BUSINESS AS A GOING CONCERN, INCLUDING THE TRADE RIGHTS AND GOOD WILL, PASSED TO THE PURCHASER THE EXCLUSIVE RIGHT TO USE THE NAME IN THAT BUSINESS AS AGAINST ALL PARTIES PARTICIPATING IN THE SALE.

Le Page Co. v. *Russia Cement Co.*, 51 Fed., 941.

C. S. Higgins Co. v. *Higgins Soap Co.*, 144 N. Y., 462.

Russia Cement Co. v. *Le Page*, 147 Mass., 206.

Menedez v. *Holt*, 128 U. S., 514.

Hoxey v. *Chaney*, 143 Mass., 592.

Brown Chemical Co. v. *Meyer*, 139 U. S., 548.

Richmond Co. v. *Richmond*, 159 U. S., 293.

Hopkins Unfair Trade, pp. 109, 110.

Dodge Stationery Co. v. *Dodge*, 78 Pac., 879.

Myers v. *Kalamazoo Buggy Co.*, 54 Mich., 215.

IV.

THE HALL'S SAFE COMPANY, COMPOSED OF THE HALLS WHO SOLD THE ORIGINAL HALL'S SAFE AND LOCK COMPANY TO THE RESPONDENT'S PREDECESSOR, SHOULD BE ENJOINED FROM THE USE OF THE WORD HALL IN THE SAFE BUSINESS BECAUSE:

(1) *They have been paid for the name.*

(2) *They are estopped to assert a right to it.*

(3) *Their use of the name Hall constitutes a fraud upon respondent.*

Howe Scale Company v. *Wyckoff, Seamans & Benedict*, 198 U. S., 118.

Peck Bros. & Company v. *Peck Bros. Co.*, 113 Fed., 291.

Chickering et al. v. *Chickering & Sons*, 120 Fed., 69.

Royal Baking Powder Company v. *Royal*, 122 Fed., 337.

Singer Manufacturing Co. v. *June Manufacturing Co.*, 163 U. S., 169.

Same v. *Brent*, 163 U. S., 205.

Brown Chemical Co. v. *Meyer*, 139 U. S., 540.

The Le Page Company v. *Russia Cement Co.*, 51 Fed., 941.

Russia Cement Company v. *Le Page*, 147 Mass., 206.

Hoxie v. *Chaney*, 143 Mass., 592.

McLean v. *Fleming*, 96 U. S., 245.

Frazer v. *Frazer Lubricator Company*, 121 Ill., 147.

Charles S. Higgins Co. v. *Higgins Soap Co.*, 144 N. Y., 462.

Levy v. *Walker*, L. R. 10 Ch. D., 436.

Garrett v. *T. H. Garrett & Co.*, 78 Fed., 472.

Meyers v. *Kalamazoo Buggy Co.*, 54 Mich., 215.

V.

EVEN IF THE HALLS WERE AT LIBERTY TO USE THEIR NAME IN THE SAFE BUSINESS, THE DECREE OF THE COURT BELOW SHOULD BE AFFIRMED BECAUSE OF PETITIONER'S FRAUDULENT CONDUCT, WHICH HAS RENDERED ANY QUALIFIED USE OF THE NAME BY HIM AN INJURY TO THE RESPONDENT.

ARGUMENT.

The right of respondent to the use of the trade name "Hall" in the safe and vault business is not disputed upon the record. The question presented is whether or not the decree of the court below was too broad which enjoined petitioner from the use of the name "Hall," except as to safes made by respondent or its predecessors. The respondent bases its right to that decree on two separate grounds: First, the Halls who manufacture the goods which the petitioner is selling as "Hall Safes" participated in and profited by the sale of the original Hall's Safe and Lock Company as a going concern to the Herring-Hall-Marvin Company. They are not only estopped to assert the right to the name of "Hall," but also they have parted with it for a valuable consideration. Secondly, the petitioner, by fraudulently taking advantage of his long connection with the Hall product, to palm off the goods of the Hall's Safe Company as those manufactured by respondent, has created a state of confusion which renders any use by him of the name "Hall" a deception of the public and an injury to respondent.

The Hall's Safe Company.

The record shows that every Hall connected with the present Hall's Safe Company participated in the sale to respondent's predecessor of the property of the original Hall's Safe and Lock Company, together

with its trade names and good will. They owned practically the entire capital stock of the latter corporation and received the consideration paid to it. It was a prosperous, going concern, and could not have been sold if any stockholder had objected. The record shows that every one of the Halls gave his consent, and that E. C. and W. H. Hall, on behalf of the family, actively participated in bringing about the sale, and became, respectively, president and treasurer of the purchasing corporation. The claim is made by petitioner herein and by the Halls in the case brought here from the Circuit Court of Appeals for the Sixth Circuit that, because the transfer was in form a sale by the corporation and not by the Halls individually, the latter are at liberty to retake the trade name "Hall," which they admit was one of the most valuable assets which they sold. In other words, the court is asked to hold that a few persons holding all the stock of a corporation, using their name as a part of its corporate name, and whose product has come to be known by the family name throughout the entire commercial world, can, as a corporation, sell the property, trade names and good will of such corporation for a large consideration, at the same time agreeing to turn over the business as a going business, and surrender their charter, and then immediately resume business of the same character, in the same locality, and call their product by the same name.

Similar contentions have been made on behalf of violators of the anti-trust laws and have been disposed of by the courts in no uncertain terms. In *Anthony* v. *American Glucose Co.*, 146 N. Y., 407, the court said:

"We have of late refused to be always and utterly trammeled by the logic derived from corporate existence, where it only serves to distort or hide the truth."

The same court said in *People* v. *North River Sugar Refining Co.*, 121 N. Y., 599, p. 615:

"But here we encounter the stronghold of the appellant's argument, which is, that if the corporations are in some manner in the combination, they are there solely as the result of a contract other than their own; are there without corporate action on their part, and so are sufferers and not sinners. The reasoning leading to that result is so severely technical as to have suggested a justification almost reminding one of an apology. We are called upon to sever the corporation, the abstract legal entity, from the living and acting corporators, as it were, to separate in our thought the soul from the body, and admitting the sins of the latter to adjudge that the former remains pure."

That language was approved in the Northern Securities case, 193 U. S., 197.

This court said in *McKinley* v. *Wheeler*, 130 U. S., 630, 636:

"* * * * the court, when necessary, will look beyond the name of the corporation to the individuals whom it represents."

The principle is well stated in Purdy's Beach on Corporations, page 6, where the author says, in speaking of the corporate organization:

"The effort of practical jurisdiction should be to regard it as a unit, or as a collection of persons according to the relation in which it acts in a given instance. As has been aptly said to this point: 'The shield will be either white or red, according as it is viewed from one side or the other.'"

If the heirs of Joseph L. Hall can be permitted to sell their product as "Hall's Safes" or authorize the petitioner to do so, they can destroy to a large extent the value of the property sold by them May 12, 1892. It would be as honest to ask the court to allow them to seize the plant and machinery sold.

We therefore submit that if in legal contemplation the deed of May 12, 1892, had been only the deed of the corporation, nevertheless the court can and will look behind the transaction and hold the individuals bound thereby, since equity requires it. But that deed was not, even in law, the deed of the Hall's Safe and Lock Company solely. The record shows that the purpose of the deed was to convey the entire assets of the corporation, which was a prosperous, going concern. Such a sale cannot be made without the consent of every individual stockholder. It is not like a transaction which lies within the power of the board of directors or managing officers of the corporation and which can be accomplished without the consent or knowledge of the stockholders. In such a case the act of the corporation may be destructive of the interests of the individual stockholder and opposed by him; the act would be the act of the corporation, and would bind the stockholder only in so far as he had committed his property to the corporate enterprise. But in the cases where the exercise of the ordinary corporate functions is not sufficient, where the act to be performed is *ultra vires* of the directors and even of an overwhelming majority of the stockholders, and the active consent of every stockholder is required, the act is not the act of the corporation alone, but is

binding upon the stockholders as completely as upon the corporation itself. This result attaches to other acts by the corporators; for example: increase of capital stock, execution of a mortgage, acceptance of charter and the use of an individual name in the corporate name. The principle is one of estoppel. The stockholder will not be heard to say that the act of the corporation was not his act when it was done and could only have been done with his consent.

Edward C. Hall and William H. Hall, respectively president and vice-president of the infringing Hall's Safe Company, attempted to show that the name "Hall" was not a trade name of the old Hall's Safe and Lock Company and consequently did not pass to Herring-Hall-Marvin Safe Company. Unfortunately for these gentlemen, their former statements with which they were confronted were strongly to the contrary, and in the end they abandoned the claim. (Rec., 288, 289, 247, 248, 257, 265.) As an indication of the trustworthiness of these witnesses on a material issue herein, we venture to print the following excerpt from the cross-examination of Edward C. Hall (Rec., 290):

> "Q. Were they known as Hall's safes?
>
> "A. They were known as the Hall Safe and Lock Company safes, made by the Hall Safe and Lock Company.
>
> "Q. I have called your attention to the fact that on these printed pages they are spoken of as Hall's safes. I ask you again, were they known as Hall's safes?
>
> "A. I am not responsible for some irresponsible parties putting the name in there, Hall's safes, when the name of the concern was Hall's Safe and Lock Company.

"Q. I grant that the corporation name was Hall's Safe and Lock Company, but I want to know whether the product was known as Hall's safes?

"A. No. Sometimes it was Hall's vaults, or Hall's Safe and Lock Company's vaults.

"Q. When applied to safes it was Hall's safes, wasn't it?

"A. I tell you no; Hall's Safe and Lock Company's.

"Q. You say, then, the words Hall's safes were not used in connection with the product of the Hall Safe and Lock Company?

"A. Not to do business.

"Q. Not used in the advertisements?

"A. I don't know anything about your advertisements.

"Q. I have just called your attention to page 115 of this circular which you say you got.

"Mr. MERRICK: That is not a circular.

"Mr. ALDRICH: Or catalogue, then.

"The WITNESS: That is a letter written by somebody else.

"Q. Well, I will call your attention to page 115, which is not a letter written by somebody else; what do you say? Do you say that the product of this company was not known as Hall's safes?

"A. The product of Hall's Safe and Lock Company was known as Hall's safes. Will that do you?"

It is thus clearly established upon the record that the trade name "Hall" passed to Herring-Hall-Marvin Company. The petitioner by his sworn pleading has admitted the great value which attaches to that name in the safe business. We have shown that the Halls who now compose the Hall's Safe Company, whose product the petitioner would continue to sell as "Hall's Safes," were the people who brought about and profited by the sale of Hall's Safe and

Lock Company's business to respondent's predecessor. In spite of this fact, the petitioner conceives himself aggrieved by the decree of the court below. This belief results from a misapprehension of the decision of this court in *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict,* 198 U. S., 118. In that case the Remingtons, who were interested in the Remington-Sholes Company, the defendant corporation, were strangers to the contract by which the complainant had acquired the right to use the name Remington as applied to typewriters. They were not children of E. Remington, the founder and owner of the business, who died in 1863, but of Samuel Remington, and it does not appear that they had ever been connected with E. Remington & Sons, prior to the sale of the typewriter business to Wyckoff, Seamans & Benedict in 1886. The opinion of this court states (p. 140) that "neither of them was paid for the use of his name and neither has parted with the right to that use." Nor was there any attempt by the defendants to use improperly the business title and trade name of the plaintiff. On the contrary, the defendant company widely advertised that its machine was not the "Remington Standard Typewriter," and its catalogue declared:

> "We state, then, emphatically, that this company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution possible customers against confusing the 'Rem-Sho' with that machine or any other" (p. 124).

The two cases are only superficially alike. In the case at bar, there has been a sale, in which the Halls, whose family name had become attached to the prod-

uct, participated, and by which they profited; in the other case, the Remingtons, of the Remington-Sholes Company, had never been paid anything for the use of their name, either directly or indirectly; nor did they have anything to do with the sale to Wyckoff, Seamans & Benedict, by which the latter acquired the right to use the word Remington in the typewriter business. In the Hall case the men who manufacture the safes and the agent selling their product in Chicago have been and are guilty of dishonest and inequitable conduct. In the Remington case there was no such element.

The principle announced by this court that in the absence of contract, fraud or estoppel, any man may use his own name in all legitimate ways and as the whole or a part of a corporate name is not disputed by the respondent. The petitioner seems to conceive that the decision in the Remington case has opened the way to sharp practice and unfair competition heretofore closed by the courts. We do not so construe the decision. It would be unjust, indeed, for a man to be enjoined from the use of his patronymic in business on the sole ground that another man of the same name had previously become identified with a similar business; nor do we contend that the respondent has the exclusive right to the name "Hall" as against the public at large. Suppose, for example, to follow the analogy of the Remington case, that some relative of Joseph L. Hall, deceased, who had never been connected with the Hall's Safe and Lock Company, should commence the manufacture and sale of safes under the name of Thomas Hall or John

Hall & Co. and make no effort to dispose of his product as "Hall's Safes." In such a case the respondent would have no complaint or right to injunctive relief; if the public should be deceived by the similarity of the names, it would be respondent's misfortune, and not the fault of the other Hall. But in the case actually before the court, the Halls have been paid for the use of their name and have parted with the right to that use. Furthermore, down to the present time, every effort has been made by the Halls and their agent, the petitioner, to foist their product on the public as the original "Hall's Safes." These facts bring the present case clearly within the exceptions noted by this court in the Remington case. These exceptions have been recognized in the earlier decisions of this court and in the Circuit Courts of Appeals. The same principle is announced in the English cases.

In *Levy* v. *Walker*, 10 Ch. D., 436, JAMES, L. J., delivering the opinion of the Court of Appeals, said:

> "I think it right to say that a sale of the good will and business conveyed the right to the use of the partnership name as a description of the articles sold in that trade, and that that right is an exclusive right as against the person who sold it and an exclusive right as against all the world, so that no other person could represent himself as carrying on the same business."

In *Royal Baking Powder Co.* v. *Royal*, 122 Fed., 337, 346 (C. C. A., 6th Cir.), LURTON, J., said:

> "Where one has used his own name as a trade name, and then parted with it, he may, of course, be enjoined from using his name in that business. *Kidd* v. *Johnson*, 100 U. S., 617, 619;

Russia Cement Co. v. *Le Page*, 147 Mass., 206; *Le Page Co.* v. *Russia Cement Co.*, 51 Fed., 941; *Hoxie* v. *Chaney*, 143 Mass., 592."

A similar case is *Chas. S. Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y., 462, which was an action against Higgins Soap Company, a newly organized corporation, to enjoin it from carrying on business under that name. Chas. S. Higgins, formerly a stockholder and president of the plaintiff company retired and established the defendant, Higgins Soap Company, and insisted upon the right to do so, on the ground that it was his family name. The court held that nobody could appropriate the business title or trade name of the old concern. They granted an injunction, saying:

> "The inference seems irresistible that the defendant assumed its corporate name so that it could carry the impression that it was the manufacturer of 'Higgins Soap,' so well known to the public."

We submit, therefore, that the trade name "Hall's" was acquired by respondent's predecessor through the purchase of the entire assets and good will of Hall's Safe and Lock Company, and that this right is exclusive against the Halls who constituted Hall's Safe and Lock Company, and who brought about and consented to the sale.

The Hall Safe and Lock Company of Illinois.

The Hall Safe and Lock Company of Illinois was organized by the petitioner for the fraudulent purpose of absorbing the name and good will of the original Hall's Safe and Lock Company, of Cincinnati, Ohio. The petitioner had been identified with

and represented the Hall product for a quarter of a century in the middle West; eighteen years of that time were spent in Chicago. The contract under which this representation was had required the "Hall" name to be kept prominently before the public and the store such as to meet the approval of the manufacturer. (Rec., 55 *et seq.*) The letterheads of Donnell's firm are conclusive proof that he continued to represent "Hall's Safes" from 1892 to 1898, when those safes were manufactured by Herring-Hall-Marvin Company. During this period the product was labeled "Herring-Hall-Marvin Company" and "Hall's Safe and Lock Works" (Rec., 63), and was sold by the petitioner as "Hall's Safes." At the end of this period, taking advantage of the financial straits of respondent's predecessor, he stole the name of the old corporation, "The Hall's Safe and Lock Company," of Cincinnati. In an instant of time he changed his representation from that of the "Hall" product to that of the infringing Hall's Safe Company. No notice of this change was given to the public. His own admissions prove that he fraudulently represented that the new corporation was identical with the original Hall's Safe and Lock Company. Before and after the change, the product in which he dealt was known as "Hall's." The signs he had used as the agent of "Hall's Safes" were used to advertise the fraudulent Hall Safe and Lock Company. These signs stood for the old "Hall" product before that incorporation and for that of the infringing Hall's Safe Company immediately thereafter. There was no change in the appearance of petitioner's store other than the discontinuance of the name A. L.

Deane & Co. and the addition of Hall Safe and Lock Company. This change, if anything, added to the false impression in the minds of purchasers and would-be purchasers of safes.

The petitioner had been so long identified with Hall's safes and had kept the name so prominently before the public that mail came to his place of business addressed to the manufacturers of the product rather than to the dealers. The petitioner testified on his direct examination as follows:

> "A. I asked the Hall boys if they had any objection to our using the names. I told them we had got a great many inquiries from advertisements in the papers connected with the Hall people for a number of years and by mail; they kept coming in all the time, and I thought if we would organize the Hall Safe and Lock Company, why, I could get my mail without any trouble, as the mail at the post-office was stopped one day—at least, it wasn't stopped, but we were questioned as to whether it belonged to us or not, and he said he had no objection, but we had better see his attorney to see whether we could organize or not; so we saw his attorney, and he told me they had surrendered their charter, had gone into liquidation, and we were at perfect liberty to organize under the name Hall Safe and Lock Company.
>
> "Q. Why did you organize under that name?
>
> "A. More to get my mail than anything else. It would have been an advantage to me if I had organized the Donnell Safe and Lock Company, I think."

One morning, during the trial in the court below, the petitioner testified that he did not know anything about the attitude of Herring-Hall-Marvin Company with reference to the use of the Hall name and did not know that such use was objected to

(Rec., 115); on the afternoon of the same day he testified that he knew about the suit having been started against the Hall's Safe Company at Cincinnati in 1897 and that every time he saw the Hall boys he talked it over with them (Rec., 119); he also testified that he asked permission of William H. Hall and Edward C. Hall to incorporate under the name of Hall Safe and Lock Company (Rec., 73); this is contradicted by both of the Halls, who were called as witnesses by the petitioner, and who testified that they were not consulted about the adoption of the name Hall Safe and Lock Company and never gave their consent thereto. (Rec., 259, 301.)

The attempt of the petitioner to escape from the averments of his sworn bill is perhaps the best indication of his motives and reliability as a witness. The court's particular attention is called to his testimony contained in the record at pages 91-96; he says (p. 92) that he did not "value the name (of Hall) at anything;" on page 93 he says that the name was valuable because the members of the Hall's Safe Company are well known in the safe trade as good safe makers and that it has no other value; on page 94 he says that the name is of "a little value" to him; on page 95 he does not think "anybody could say it (the name) is of great profit to them," but that when he signed the bill he thought it was a source of great profit to him and does not now (at the time of the examination) consider that a great mistake.

In 1903 the petitioner advertised in the Chicago Business Directory as follows:

> "Hall's Safe & Lock Company, largest manufacturers of safes, vaults, &c., in the world. 52-54 Wabash Avenue. Telephone Central 4517." (Rec., 99.)

On page 99 he testifies that at the time the bill was filed he employed about twenty-five men and that he was not the largest manufacturer of safes in the world; that they used to advertise the old Hall's Safe and Lock Company that way and continued the same advertisement as applying to the puny Illinois corporation formed in 1898.

The advertisement appearing in Chicago daily papers prior to and even after the commencement of this litigation is further evidence of petitioner's fraudulent methods. That advertisement was as follows (Rec., 100):

> "Caution. The only safes made by the Halls are sold in Chicago at the old stand, 52-54 Wabash avenue. Beware of imitations."

What further proof of petitioner's fraudulent motives and bad faith is necessary? And yet the story which Donnell unconsciously tells of himself is corroborated by other witnesses.

George T. Trumbull testified that he was with Mr. Donnell and A. L. Deane, as book-keeper, cashier and salesman, from 1884 to the date of the failure in 1898 (Rec., 309); that prior to the organization of the Hall Safe and Lock Company by Messrs. Deane and Donnell he was asked to join them, and that they stated that it was their belief that the Herring-Hall-Marvin Company would cease to exist, and that the time was opportune to organize the business under the name of Hall Safe and Lock Company, and that

great value would come through the use of that name (Rec., 310). George H. Brooks testified that he was connected with A. L. Deane & Co. from 1891 to about 1896, and in 1898 was engaged by the Hall Safe and Lock Company of Illinois as salesman; that Mr. Donnell instructed him in making sales to represent that it was the original Hall Safe and Lock Company. (Rec., 335-336.) Donnell contradicts both of these witnesses, but as he is so frequently in conflict with himself and with the Halls upon material facts, as well as with the record made contemporaneously with the acts denied, and as he himself did so represent by his conduct and advertisements, not much importance can be attached to his denial.

No better description of petitioner's corporation, Hall Safe and Lock Company of Illinois, can be given than is contained in the language of the Circuit Court of Appeals for the Seventh Circuit in the case of *Peck Bros. & Co.* v. *Peck Bros. Co.*, 113 Fed., 296:

> "'it was conceived in sin and brought forth in inquity, that wrong attended at its birth and that fraud stood sponsor at its christening, imposing upon the corporate child a name to which it was not entitled, and which it had no right to bear.'"

The petitioner has abandoned his claim to the name Hall Safe and Lock Company and admitted at this late stage of the litigation that the use of that name was a mistake. He does, however, claim the right to use the name "Hall" in the safe business, while conceding that his fraudulent conduct may "justify restrictions on that use which otherwise would be wholly unwarranted." (Petition,

p. 9.) The answer to this contention is that the record discloses such a state of confusion as to which safes are "Hall's Safes" that any use by petitioner of the word "Hall," no matter how restricted, would result in an injury to respondent; and since Donnell by his conduct has created this situation it is only fair that he should pay the penalty.

Confusion.

That there can be two different firms or individuals engaged in the manufacture or sale of "Hall's Safes" is impossible to suppose. The record shows that the term "Hall's Safes" signifies to the public that the product is that of respondent.

It is not disputed that John Hall or Thomas Hall, or any other Hall who has not sold his right to use that name, may make safes and designate them as safes made by John Hall or Thomas Hall, as the case may be, providing he takes pains to differentiate his product from that of respondent, and informs purchasers that his corporation is not connected in any way with respondent. (*Howe Scale Co.* v. *Wyckoff, Seamans & Benedict, supra.*) But no other safes than those of respondent's manufacture can be sold as Hall's safes, for that is the term by which respondent's goods are known to the public, and the sale of any other by that name is a fraud on respondent since the goods thus sold could be sold only as the manufacture of respondent. There is only one "Hall's Safe," as there is only one Baker's Chocolate, Chickering Piano, or Royal Baking Powder.

Counsel have contended that there is no proof in

the record of any confusion resulting from the name "Hall" in the safe business.

If this were true, still the decree below was right, for the members of the Hall's Safe Company have sold their right to use that name. But it cannot be true as a matter of reason, and as a matter of fact it is not true. On page 163, George English, one of petitioner's witnesses, testifies concerning a clear case of confusion. On page 131 Donnell testifies concerning a similar occurrence (also see Rec., 120). The original bill of Hall Safe and Lock Company, sworn to by him, contains positive averments of confusion. (Rec., 8.) On page 109 he testifies:

> "Q. I would like to have you explain on the record a little more explicitly how the opening of the store at Lake and Dearborn streets confuses and deceives the public.
>
> "A. To this extent: Yesterday in my testimony, after reading it over, I found that I have confused the old Hall Safe and Lock Company with the new Hall Safe and Lock Company, and that I had stated that the name of the Hall safe was of no benefit to me. I was virtually misstating the thing. I was being misguided. I thought I was referring to the old Hall Safe and Lock Company prior to the selling out to the Herring-Hall-Marvin Company, and referring to the present Hall Safe and Lock Company and the present manufacturers of Hall's safes I would say this: That the reputation that they have and the reputation that they go under is very valuable to me, and for any other concern to come into Chicago by the name of Hall Safe and Lock Company after I have been here since 1898 is very confusing to the public. They came in here under a wrong name, and my friends go in there, the public go in there, and they are liable to buy safes thinking it is my institution.
>
> "Q. Because it is a Hall safe?

"A. Because it is a Hall safe, yes, sir; because we have had our agents out representing that it was a Hall safe, made by the Hall boys, whose reputation is good, and whose reputation always has been good since they have started into the business on account of the goods that they have made, which we consider practically superior to any of the balance of the safes that are made."

When the wrong-doer himself cannot help confusing the two interests, can it be reasonably supposed that the buying public will understand the difference? On page 133 the same witness testifies:

"Q. And the fact that the Herring-Hall-Marvin Company established a store at the corner of Dearborn and Lake streets, with such signs as they have up there, you think would confuse the public because people who are seeking Hall's safes might go in there?

"A. I know it confuses the public in this way: They have been in there and they have come over to my store and told me that they went in there thinking it was the Hall Safe and Lock Company that they had previously dealt with, and that while they were in there they tried to corrupt their minds as to the safes the Hall Safe and Lock Company represented, as to the Hall safes that they sold."

Is it not obvious that any use by the petitioner of the name "Hall" in the conduct of the safe business is bound to continue the false impression and confusion created by his treachery to the Hall's Safe and Lock Company and its successors, whom he recognized for six years? It is impossible that his use of the name should be so restricted that some old customer of respondent or some person who has read the advertisements of the Hall's Safe and Lock Company during the twenty-eight years of its ac-

tivity in Chicago, would not repair to the "old stand" in search of a "Hall Safe;" the prospective purchaser would inevitably conclude upon finding the name "Hall" in some form on the signs and stamped on the product there displayed that the "old stand" was still the "old stand" and that he was buying a safe made by some legitimate successor of the original Hall's Safe and Lock Company. Is it possible to conceive upon the record now before the court that Donnell would notify such a customer of the change of interest?

In conclusion, our right to the decree of the court below is twofold: In the first place, the respondent has bought from the Halls, who composed the Hall's Safe and Lock Company, the exclusive right as against them to use the family name in the safe business. In the second place, the petitioner has by his fraudulent conduct created such a condition of confusion that any use made by him of the name "Hall" in the safe business is in derogation of respondent's rights. Nothing short of the broad terms of the decree below will insure to the respondent the full enjoyment of the property acquired by it through *mesne* conveyances from the Hall's Safe and Lock Company; nothing less than the relief afforded by that decree will adequately protect respondent from the results of petitioner's fraudulent conduct.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1907.

No. 106.

JAMES W. DONNELL,
Petitioner,
vs.
HERRING-HALL-MARVIN SAFE COMPANY AND HALL SAFE AND LOCK COMPANY,
Respondents.

Certiorari to Circuit Court of Appeals, Seventh Circuit.

SUPPLEMENTAL BRIEF FOR PETITIONER.

In a brief already filed we have endeavored to show that this case is one, upon its facts, for the application of the rule, "that in the absence of contract, fraud or estoppel, any man may use his own name in all legitimate ways and as the whole or a part of a corporate name." At the time the brief was written, the discussion of this rule did not seem to call for any extended comment upon the proposition, suggested by the last line of the quotation, that the right of an individual to use his name as the whole or a part of a corporate title is just as full and complete as the right to employ his name in a business carried on by him as an individual; but an intimation in the brief of respon-

dent of an intention to rely upon the case of *Chas. S. Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y. 462, where a rule seemingly opposed to the above proposition is laid down, leads us to believe that a somewhat fuller discussion of this question may be not wholly superfluous.

The facts of that case are briefly these: Charles S. Higgins, for many years a manufacturer of soaps, sold his business to complainant and, as part of the agreement of sale, entered into a contract not to engage in the soap business as long as he should remain in the employ of complainant. A few months after the sale he left the complainant and organized the defendant corporation, and a bill was brought to restrain the use of his name by the defendant. It seems to have been assumed that Higgins had the right to use his name in an individual soap business or in a partnership organized to carry on that trade; but it was contended, and the court sustained the contention, that the defendant corporation organized by Higgins had no right to use his name in its corporate title.

Applying the rule for which this case seems to stand to the facts of the case at bar, the contention of the respondent would be, that, granting the right of the Halls, after leaving the employ of the Herring-Hall-Marvin Company, to engage in the manufacture and sale of safes, by way of a partnership or individually, and to use their names freely in connection with such business, they had no right to organize a corporation to carry on the safe business whose corporate name should contain their name, no matter what their interest in that corporation might be; that a corporation thus named and organized stands in the position of a

third person who has arbitrarily selected and appropriated to his own use the trade name of the respondent.

An analysis of the reasoning of the court in the Higgins case is disappointing. Little is urged in support of the rather startling distinction which the court finally sustains, save that a corporation, being a distinct entity, cannot exercise the rights which may belong to its incorporators, and the further fact that as a corporation is free to choose its name there is no necessity for its appropriation of a personal cognomen. This latter argument, merely suggested in Higgins v. Higgins, has come to be the main reliance of those few courts which have followed the doctrine of that case. Indeed, it would seem to be a fair statement of the authorities to say, that this whole distinction between the right to use a name in a personal and in a corporate business is based upon the idea that no necessity exists for the selection of personal names by corporations. The argument may assume various forms but in substance it is always the same.

The contention that because a corporation is free to choose its name, therefore the individuals composing the corporation have no right to use their names as part of its corporate title is, it is submitted, a most inconclusive argument upon which to base such a serious restriction upon the use of personal names in business. Necessity is not the test by which we determine the existence of a man's fundamental rights. It is indeed a novel proposition, that we should first look to see how badly a man needs to use his name in a particular case before we can determine his right to do so. Moreover, it is not absolutely necessary

that a person should use his own name in his private business, he might adopt a fictitious designation; but because necessity does not compel its use, the right to so employ his family name is none the less firmly established. No case has been found which would deny the right of the Halls to use their name in a partnership; yet in no possible way can the use of the name in a partnership be distinguished from its use in a corporation upon the ground of the necessity for the use, for in both cases the names are often selected and artificial. The fundamental unsoundness of the proposition—that a right to the use of a trade name rests in any degree upon necessity—has been pointed out by courts of great authority. The learned Chief Justice, in the case of *Howe Scale Company* v. *Wycoff*, et al., 198 U. S. 118, a decision to which we shall have occasion hereafter to refer in this discussion, disposes of this argument very effectually. At page 136 he says:

"It is said that the use of the word 'Remington' in the name 'Remington-Sholes' (the corporate name) was unnecessary, as if necessity were the absolute test of the right to use; but a person is not obliged to abandon the use of his name or to unreasonably restrict it. The question is, whether his use is reasonable and honest or is calculated to deceive."

The burden of establishing this distinction between the use of a name in a corporate title and its use in a personal business should rest upon those who contend that such a distinction exists; for certainly the statement of the rule, which is nowhere disputed, that a man may make any honest use of his name in his business, leads to the strong presumption that the right extends equally to an individual

business, a partnership or a corporation of which he is a member, since any of the three may, in a popular sense at least, be spoken of as his business. No tenable reason can be advanced to overthrow this presumption upon the distinction suggested.

There is a further intimation, however, in the Higgins case that should have some consideration. It is—that the organization of a corporation to adopt the name, which it is conceded Higgins could have used in his individual business, lends to that use of the name a color of fraud. Such suggestion has no foundation in business experience. It is a perfectly normal thing for a man to wish to take advantage of his name in the business which he contemplates founding, and at the same time to enjoy the benefits of conducting that business as a corporation. He may need wide financial assistance, the skill of others willing to incorporate with him; how then is it improper for him to combine these advantages, and what reason can be suggested for compelling him to choose between the use of his family name and the benefits of incorporation? In the *Amercan Cereal Co.* v. *Eli Pettijohn Cereal Co.*, 72 Fed. Rep. 903, the use of the name Eli Pettijohn in the defendant's corporate title was objected to, although it did not appear that the right of Eli Pettijohn to use his name in an individual business was much questioned, and the court said, page 906, meeting the suggestion that the adoption of a personal name by a competing corporation smacks of fraud:

"It can hardly be contended that he (Pettijohn) had not the right to make, or rather to continue making, rolled

wheat, and to market the same in packages bearing his name, in any part of the United States. It would seem to follow, also, that he might secure the co-operation of others willing to assist him financially in the business, and that he might, with such co-operation, form a corporation for the purpose of carrying on such business."

Indeed, the custom may be said to be general to employ personal names in the titles of corporations, and no improper inferences can be drawn from the fact that the Halls chose the form of a corporation to carry on their business rather than that of a patnership or some other kind of association, provided that business was such as they had a right to carry on and in their own names.

The truth is, that a corporation in which a man has invested his capital and to which he has devoted his time and energy is as much his business, as far as his personal interest and the lawful use of his business rights are concerned, as an enterprise more literally and technically personal.

In *Monarch* v. *Rosenfeld*, 19 Ky. L. Rep. 14, the court was called upon to decide whether the defendant Monarch had violated a former decree of the court, which provided that he might use his name on goods of his own manufacture or of the firm to which he belonged, it appearing that since the decree, Monarch had become an officer and stockholder in a corporation, to whose products he was attaching his name. The question was squarely presented, whether Monarch's interest as a stockholder was sufficient to justify the use of his name in the corporate title. The court said:

"Now it is argued that the court by this judgment limits

S. I. Monarch to the use of his name in business alone or as a partner, but, as a stockholder in a corporation, he cannot use his name in the corporate business; its property is in no sense his property, its business is not his. . . I do not doubt but that in certain kinds of corporations a stockholder can authorize the corporation to use his name, and for some purpose its business is his business. It is known to all—the knowledge is so universal that I think the court can take notice of it—that in these days the practice and custom has grown up among business men that when two or three associate themselves together for the purpose of engaging in any trade or business of any magnitude, instead of forming a partnership to conduct and carry on said business, they form a corporation; invest in it all of their capital, give it all their time and attention. In reality it is their business. But for fiction of law, such an association would be a partnership. If the court of appeals meant to say that S. I. Monarch could not use his name in such a corporation, he has, after all, but a limited right to use his name in business. I do not think such is the meaning of the court."

Finally, it must be borne in mind that the use of a trade name is only wrongful in so far as it results in unfair competition and is a virtual fraud upon competitors using the same or a similar name; and no rule which declares that the use of a name in an individual business is lawful, but as part of a corporate title is unlawful, can be sound, unless it is based upon some appreciable distinction in the hardship which will be worked upon trade competitors in the two classes of use. Such a difference cannot be shown. What does it matter to those who are objecting to the use of a trade name that it is being used by a corporation, a partnership or an individual? The name may sound the

same, may have the same financial backing, may do the same damage in all three cases.

How are respondents injured by the fact that the Hall Safe Company is a corporation rather than a partnership of the same name or a mere association of individuals with no formal organization? The damage, if any, that results, will come from the use of the name without respect to the nature of the organization employing it.

This fatal weakness in the rule laid down by the Higgins case has been pointed out by most of the courts that have had occasion to pass upon the question. So in *Monarch* v. *Rosenfeld, supra,* the court said:

"It is conceded that he (Monarch) can, in good faith, form a partnership with Rosenfeld and Hirsh in the whiskey business, and the firm might use his name. If the firm can, in the light of the opinion, there is no reason why his name cannot be used in the corporation. . . . . The plaintiff can be injured no more in his business by the corporation than he can by such a firm."

Again in *Baker* v. *Baker,* 115 Fed. Rep. 297, where the complainant sought to restrain The William H. Baker, Syracuse, N. Y., corporation from using the name of Baker, which had become identified with complainant's goods, the court took notice of the fact that William H. Baker had organized a corporation to carry on his business and had given it his name, and said (page 300):

"For reasons of convenience, the owner concluded to reorganize the concern as a corporation, and desiring to preserve the good will, he chose the name with which the good will was identified. He intended to remain the owner of the concern, and has remained its owner, as before. As regards the complainant, it is wholly immaterial whether

the business is conducted as that of a corporation, or that of an individual, by the same description."

A further discussion of this question seems superfluous in view of the recent decision of this Court in *Howe Scale Co.* v. *Wyckoff* et al., *supra.*

In that case the complainants urged upon the court the affirmative of the very proposition which we have been discussing—that the right of an individual to use his name in business does not extend to a corporation in which he is a stockholder. The elaborate briefs of counsel were devoted in large part to the argument of this question and the citation of authorities was exhaustive.. The case of *Higgins Co.* v. *Higgins Co.* was called to the attention of this Court no less than eight times in the printed argument of complainants. With the issue thus squarely before them, the Court declared in unqualified terms against the rule of the Higgins case; and speaking through the Chief Justice said:

"This (the decree in the court below) denies the right to use the personal name rather than aims to correct an abuse of that right, and involves the assertion of the proposition that the use of the family name by a corporation stands on a different footing from its use by individuals or firms. But if every man has the right to use his name reasonably and honestly in every way, we cannot perceive any practical distinction between the use of the name in a firm and its use in a corporation. It is dishonesty in the use that is condemned, whether in a partnership or a corporate name, and not the use itself."

Again at the close of the opinion:

"We hold that in the absence of contract, fraud or estoppel, any man may use his own name in all legitimate ways and as a whole or a part of a corporate name."

This clear and authoritative statement of the law must, it is submitted, be conclusive of the question raised in the case at bar, disposing completely of the suggestion that there is any difference between the Halls' right to use their name in a corporate and in an individual business.

To be sure in one important respect the facts of the two cases differ. In the Howe case there had been no sale, no business dealings between respondent and complainants, such as took place between the Hall Safe & Lock Company and the respondent's predecessor; but this difference, although it may be important in other respects, cannot effect the question of the Halls' right to use their names in a corporate title as distinguished from a private business. Matters of contract affect the right to use the name Hall in any capacity, public or private, but limit the right in one class of cases no more than in the other.

Fite v. *Dorman,* et al. (Tenn. 1900), 57 S. W. Rep. 129, might be noted as a case in which there had been a sale of the business by the respondent to the complainant, and yet the same decision was reached as in *Howe Scale Company* v. *Wyckoff* as to the use of the respondent's name in the corporate title. A further citation of authorities is not deemed of value.

Some mention might be made, in closing, of the authorities cited in respondent's brief in support of the contention upon which counsel seem principally to rely in this case—that the Halls are to be treated as if they had actually been parties to the sale of the business and good will of the Hall Safe & Lock Company to respondent's predecessor. To reach this result, the respondent seeks to maintain that

this is one of those cases in which the fiction of corporate entity will be disregarded, and to this point the authorities cited are directed. They do not, it is submitted, sustain the proposition as applied to the facts of this case. They are cases where the corporation or stockholders, as the case may be, are seeking to escape liability for some fraudulent or illegal act by setting up the shield of corporate entity. Thus in *State* v. *Standard Oil Co.*, 49 Ohio St. 137, the stockholders had taken part in a proceeding that would clearly be *ultra vires* of the corporation and on *quo warranto* to forfeit the charter the corporation was not allowed to plead that the act of the stockholders was not its act. In the Northern Securities Case, 193 U. S. 197, the various corporations were held to be bound by the acts of their several stockholders in transferring their stock to the Northern Securities Company for the purpose of forming an illegal combination. These are typical of the cases cited, and the rule which they lay down is that in equity, and sometimes even in proceedings at law, a court will look behind the corporation, when it becomes necessary to prevent a transaction clearly fraudulent or illegal from being carried out or to enforce an agreement where fraud would result from its non-enforcement.

What application has such a principle to the case at bar? Here is a contract entered into by a corportion. No fraud attended its making or its subsequent performance. It will not do to say that the use of the Halls' name by the Hall Safe Company of Ohio will be a fraud upon respondent and therefore will justify the application of the rule laid down by the above cases; for to say that it is a fraud for

the Halls to so use their name assumes the very point at issue, namely, that there is some contract by which they agree not to use their name.

The truth is, that the authorities relied upon by respondent are, as the learned Court has so well said in the case of Hall Safe Company v. Herring-Hall-Marvin Safe Company in the Sixth Circuit, "all cases where for special purposes and in special circumstances the Court held that it was competent and proper to regard the rights and duties of stockholders in corporations." None of the "special circumstances" are shown to be present in this case, for there is no illegal or fraudulent transaction upon which to predicate the court's interference.

We may be pardoned for again calling attention to the fact that the Hall Safe & Lock Company did not purport, nor had it any right, to sell the use of its stockholders' names, nor their right as individuals to engage in the business of making and selling safes; such rights were purely personal, and over them the corporation had no control whatever. Moreover, there is nothing to show that any of the stockholders expected to part with the right thus to trade and to use their names when the corporation sold out, except *sub modo* and to the extent of their individual engagements in their personal contracts, and these contracts with the Halls clearly indicate that the purchaser of the corporation's rights did not understand that these gentlemen, by the contract made by their corporation, in any way limited their rights, as individuals, to carry on the business to which they had devoted their lives. .To impose such a limitation upon their rights in this regard, was the plain

object of the restrictive covenants contained in their several contracts. With the full and exact performance of these covenants respondent must be content. It is entitled to the "due and forfeit" of its bond but to nothing more; such restrictive covenants are to be strictly construed and cannot be enlarged nor extended to cover that which does not fall within their plain prescription.

Respectfully submitted,

GEORGE P. MERRICK,

S. S. GREGORY,

Counsel for Petitioner.

January, 1908..

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

No. 106.

JAMES W. DONNELL,

Petitioner,

vs.

HERRING-HALL-MARVIN SAFE COMPANY and HALL SAFE AND LOCK COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF PETITIONER.

Upon petition of James W. Donnell for writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, in this cause, this court on October 30, 1906 (Trans., 391) granted the writ prayed. It may be helpful to a final determination of the cause, to again state concisely the facts, the errors assigned and the authorities believed controlling on the questions presented.

PLEADINGS AND ORDERS.

The Hall Safe and Lock Company, an Illinois corporation, as complainant, on June 28, 1904, filed its bill in the Superior Court of Cook County, Illinois, against the Herring-Hall-Marvin Safe Company, a New Jersey corporation, defendant, alleging that the latter company was wrongfully using the corporate name of complainant and otherwise depriving it by unfair means of the good will, profits and advantages that it might otherwise enjoy, and praying for an injunction against said defendant corporation, to prevent said acts. (Trans., 3 to 10.)

On petition by defendant, Herring-Hall-Marvin Safe Co., the bill was removed to the United States Circuit Court for the Northern District of Illinois (Trans., 10-11). On July 15, 1904, said defendant answered said bill and on the same day filed its cross-bill against said complainant, The Hall Safe and Lock Company, and your petitioner, James W. Donnell, alleging that said complainant company was organized and doing business for the alleged fraudulent purpose of obtaining the advantage and reputation and trade of Herring-Hall-Marvin Safe Company and praying that it and your petitioner, James W. Donnell, be enjoined from carrying on the safe business in the name of the Hall Safe and Lock Company, or any name of which the word "Hall" is a part, and from marking their safes with any name of which "Hall" is a part, and from advertising or offering safes for sale as "Hall's Safe" or by any name of which the word "Hall" is a part, and for damages and other relief. (Trans., 24 to 33.)

Your petitioner and the Hall Safe and Lock Company answered said cross-bill denying its allegations, to which cross-complainant filed replication. (Trans., 33 to 46.)

On motion of complainant, the Hall Safe and Lock Company, for a preliminary injunction, the cause was referred to a special master, and a few days later, by consent, it was ordered that the special master also take testimony on the cross-bill and report his findings. The special master reported adversely to complainant and in favor of cross-complainant, recommending an injunction against your petitioner and the Illinois corporation as prayed by the cross-bill.

The Circuit Court (Kohlsaat, J.) entered an injunctional order December 13, 1904, denying the complainant's motion for an injunction, *dismissing its bill for want of equity* and enjoining *pendente lite* the Hall Safe and Lock Company and your petitioner, James W. Donnell, their, and each of their servants, etc. from using or employing the name of *Hall Safe and Lock Company*, or any other name similar to or liable to be mistaken for said Hall Safe and Lock Company in carrying on the safe and vault business and further ordering the master's report, in so far as it recommended the matters hereinabove ordered, be affirmed, and that, in all other matters the exceptions to said master's report be sustained and requiring an injunction bond and deferring the effect of the decree for twenty days. (Trans., 49-50.) No appeal or writ of error from the order dismissing the original bill for want of equity was ever taken and *no error is now assigned on that order.*

After a hearing on the cross-bill and on June 1, 1905, said Circuit Court (Bethea, J.) entered a final decree as prayed by the cross-bill enjoining the Hall Safe and Lock Company and your petitioner, James W. Donnell, their successors, employe- etc., from carrying on the safe and vault business in the name of Hall Safe and Lock Company, or any name of which the name "Hall" is a part or from marking their safes with any name of which the name "Hall" is a part, *or from advertising or offering safes or vaults for sale as "Hall's Safes," or by any name of which the name "Hall" is a part, except or unless the safes so offered shall have actually been made and manufactured by the original Hall's Safe and Lock Company of Ohio, or its successor in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company,* and referring the cause to a master to take an account of the profits accruing to said Hall Safe and Lock Company, an Illinois corporation, and James W. Donnell, growing out of the unauthorized and unwarranted use of the said name. (Trans., 51 and 52.)

On appeal to the Circuit Court of Appeals for the Seventh Circuit, the final decree of the Circuit Court was affirmed. (Trans., 389.)

The opinion of the learned Circuit Court of Appeals for the said circuit is shown in the transcript pages 381 to 389, inclusive, and we print the opinion of the learned Circuit Court of Appeals for the *Sixth* Circuit because the same questions on the same facts and propositions of law are there discussed and a totally different conclusion reached.

The errors complained of by petitioner here are set up in the assignment of errors in the transcript on pages 371 and 372 and are embraced in the first assignment that the courts below erred in finding the issues in favor of the cross-complainant and particularly in this, that the court erred—

(1) In enjoining petitioner from "advertising or offering safes or vaults for sale as 'Hall's Safes' or by any name which the word 'Hall' is a part, except and unless the safes so offered shall have been actually made and manufactured by the original Hall's Safe & Lock Co. of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company, cross-complainant," and

(2) In referring said cause to the master in chancery to take account of the profits accruing to James W. Donnell growing out of the alleged unauthorized and unwarranted use of the name of Hall Safe and Lock Company, an Illinois corporation.

THE FACTS.

Inasmuch as the facts are with some detail set out in the two opinions filed, by said Circuit Courts of Appeal and are not disputed, we refrain from elaboration. The main and material facts are, briefly, these:

In 1847, Joseph L. Hall began the manufacture of safes known to the trade as "Hall's Safes" at Cincinnati, Ohio; and continued the manufacture and sale of safes either alone or in partnership with others under different firm names in which the

name of Hall appeared until 1867, in which year he organized an Ohio corporation known as "Hall's Safe and Lock Company." Of this company Mr. Hall was president and he continued to be such until his death in 1889, when his family succeeded to his interest in the corporation and his sons and son-in-law continued to carry it on until 1892. During all of this time the safes and vaults made by Mr. Hall, his various partnerships and the corporation bearing his name, achieved and deserved a high reputation in the trade. Upon the death of the elder Hall, his eldest son, Edward C. became president of the company and the other sons held other offices of trust in the company. In fact, the only business known to Edward C. and William H. Hall was and is the making and selling of safes and vaults.

In 1892, the Herring-Hall-Marvin Company was organized under the laws of New Jersey as a combination to take over the business of most of the leading safe manufacturers of the United States and that company by bill of sale May 12, 1892, acquired the property and good will of the Hall Safe and Lock Company, the original Ohio corporation. (Trans., 183-186.) The latter company in pursuance of its agreement contained in the bill of sale, dissolved and surrendered its charter. (Trans., 281.) The New Jersey corporation failed in 1897 and the present company, the Herring-Hall-Marvin Safe Company, also organized under the laws of New Jersey in 1900, acquired title to the property of the former company by purchase from its receivers, who had managed the affairs of the insolvent concern from 1897 to 1900. (Trans., 189-192.)

William H. Hall and Edward C. Hall, two of the sons of Joseph L. Hall, and who had been identified with him in the conduct of this business at the time of the sale mentioned and as a part of the same transaction, by written contract entered the service of the Herring-Hall-Marvin Company. Edward C. Hall became president and afterwards vice-president and William H. Hall became treasurer of that company. These gentlemen agreed when they entered into the service of that company that they would not engage in the safe business east of the Mississippi River so long as the company desired to retain their services as stipulated in their contracts. (Trans., 233, 240, 280.) Both ceased to be officers of the company and left its service in August, 1896, and were then fully released from all contract obligations in this regard. (Trans., 241-280.)

In September, 1896, Edward C. Hall, William H. Hall and Charles O. Hall, all sons of Joseph L. Hall, caused to be organized under the laws of the State of Ohio, a corporation under the name of the Hall's Safe Company for the purpose of engaging in the business of manufacturing and selling safes and vaults. (Trans., 38.)

In February, 1897, the Herring-Hall-Marvin Company filed a bill in the United States Court for the Southern District of Ohio, seeking to enjoin Hall's Safe Company, Edward C. Hall, William H. Hall, Charles A. Hall, Walker P. Hall and A. Acton Hall, sons of said Joseph L. Hall, from engaging in the business of manufacturing fire proof and burglar proof safes and vaults under the name "The Hall's Safe Company," or under any other name

being substantially the same as Hall's Safe and Lock Works, Hall's Safe and Lock Company or The Hall's Safe Company, and calculated to deceive the public and lead it to believe that intending purchasers were dealing with the Herring-Hall-Marvin Company, or by the establishment founded by Joseph L. Hall. (Trans., 31-38.) In May, 1897, The Hall's Safe Company, Edward C. Hall, William H. Hall and Charles O. Hall, answered said bill and later replication was filed. While said suit was pending the Herring-Hall-Marvin Company became insolvent and receivers were appointed; such receivers continued the business until December, 1900, when a reorganization took place and the Herring-Hall-Marvin Safe Company took over and has since continued the business as successors to the Herring-Hall-Marvin Company. On July 10, 1901, the Herring-Hall-Marvin Safe Company filed a petition for leave to file a supplemental bill in the litigation last mentioned, then pending, and seeking the same relief as the original bill. Leave was granted in February, 1902, to file said supplemental bill and the defendants afterwards demurred to said supplemental bill. Nothing further appears to have been done with this suit until on March 26, 1904, the demurrer was sustained and leave was given to file an original bill which was done and at the time of the hearing of this bill, the litigation in the United States Court for the Southern District of Ohio, last above mentioned, was pending. (Trans., 31, 32.) This finally resulted in a decree against The Hall's Safe Company and the Hall Brothers, substantially in accordance with the prayer of the bill, but which was reversed as to the Hall Brothers with directions to dis-

miss the bill as to them and a new injunction ordered as to the company, enjoining it from carrying on the safe or vault business in the name of The Hall's Safe Company, or any other name having similarity to the name Hall's Safe and Lock Company, *without also giving information to the public that it is not the business formerly carried on by the Hall's Safe and Lock Company,* and from marking, advertising or otherwise designating its safes and vaults as the products of the Hall's Safe and Lock Company or its successors in business, or pretending that it is carrying on the business started by Joseph L. Hall and continued by the Hall's Safe and Lock Company; and from interfering in any manner with the exclusive right of the complainant to possess and enjoy the good will acquired by the Hall's Safe and Lock Company and from using the trade name of said last named company *without at the same time so qualifying such trade name as to show that the trade name used is not the one formerly used to designate the products of the Hall's Safe and Lock Company.* See *Hall's Safe Co. et al v. Herring-Hall-Marvin Safe Co.,* 146 Fed. Rep., 37, p. 44 of opinion, and copy at close of this brief.

It is proper to state at this point, that, as to the decree entered by the learned Circuit Court of Appeals for the Sixth Circuit, all the parties thereto joined in a motion to this court for a writ of certiorari, which has been granted, and that cause is now pending on the docket of this court at this term, as Number 136.

Petitioner, James W. Donnell, had been a member of the firm of A. L. Deane and Company, which firm

had for many years in Chicago, sold safe and vault work of the Hall manufacture and continued so to do up to the time when the first Herring-Hall-Marvin Company was formed in 1892 and acquired the property of Hall's Safe and Lock Company of Ohio, by bill of sale. This succeeding company terminated the agreement between the selling company and A. L. Deane and Company (Trans., 236), but A. L. Deane and Company continued to act as selling agents, to some extent, of the Herring-Halll-Marvin Company until their failure in 1898. In February, 1898, your petitioner and A. L. Deane, now deceased, incorporated the Hall Safe and Lock Company of Illinois, believing they had the right to use the name. (Trans., 107-115-116.)

Inasmuch as the Hall Safe and Lock Company has abided the interlocutory decree of December, 1904, ordering it to discontinue business in that name, it is not necesary or important now to justify or explain that step further than to say that the evidence in the record warranted the conclusion on the part of petitioner that the Herring-Hall-Marvin Safe Company had abandoned the Hall name except as a part of its corporate designation, it appearing that the original Hall's Safe and Lock Company of Ohio, had dissolved, ceased doing business and surrendered its charter, that the succeeding Herring-Hall-Marvin Company had for some years after its organization, sold its product under its own name and not under the name of Hall's Safe and Lock Company, or the other constituent companies out of which it was formed, and that the Hall Brothers had consented, or, at least not objected, to the use

of the Hall name. Moreover, the Illinois corporation complied with the interlocutory decree and is not here assigning error on the final decree nor seeking any relief; hence, the fact of the formation of this Illinois company is not now important.

It will be remembered that by the injunctional order of December 13, 1904, dismissing the original bill filed in this cause, petitioner and the respondent, Hall Safe and Lock Company, were denied the right to further use the corporate name of Hall Safe and Lock Company, or any other name similar or liable to be mistaken for said Hall Safe and Lock Company, in carrying on the safe and vault business (Trans., 49 and 50), but were permitted twenty days in which to make the necessary arrangements to carry on their business in some other name, and accordingly, a corporation was at once organized under the laws of the State of Illinois, named the Donnell Safe Company, of which your petitioner is president (Trans., 359), and all steps were taken to comply with the injunctional order of December 13, 1904, in every respect. That this order has been fully observed will not be seriously questioned.

The final decree recites the incorporation of the Donnell Safe Company, and that it has succeeded to the business of the Hall Safe and Lock Company of Illinois, and enjoins that company and your petitioner, its and their successors, assigns, agents, servants and employes from advertising or offering safes or vaults for sale as "Hall's Safes," or by any name of which the word "Hall" is a part, except or unless the safes so offered were manufactured by the original Hall's Safe and Lock Company of Ohio,

or its successors in business, Herring-Hall-Marvin Company, its receivers, or the present Herring-Hall-Marvin Safe Company, and the effect thereof, is to restrain the Donnell Safe Company (though not a party) and your petitioner, from selling the product of the Hall's Safe Company of Ohio, and to this extent at least, the right of Hall's Safe Company of Ohio to market its product in the City of Chicago and throughout the Seventh Judicial Circuit is denied. This decree is affirmed by the learned Court of Appeals for the Seventh Circuit, doubtless upon the conclusion that Hall's Safe Company of Ohio has no right to carry on its safe and vault business under that corporate name, although its was organized and is managed, directed and controlled by three of the sons of Joseph L. Hall, the original founder of the business in Cincinnati, and notwithstanding it is not a party to this suit.

The real question, then, is, although petitioner is under no contract relation whatever with the Herring-Hall-Marvin Safe Company, and no such relation exists or has existed between the incorporators of the Hall's Safe Company of Ohio and the Herring-Hall-Marvin Safe Company, whether, upon such restrictions and regulations as a court of chancery may reasonably impose in order to avoid deception of or misapprehension on the part of the public, the Messrs. Hall of Cincinnati, Ohio, organized as the Hall's Safe Company, may carry on the safe business in which their lives have been spent, and make and sell its product under a corporate name containing their own family name and surname; and further, whether your petitioner, or the Donnell Safe Company, or any one, may sell that

product under like regulations? In other words, the question is, should your petitioner be prevented from disposing of the product of "Hall's Safe Company" throughout the Seventh Judicial Circuit, while Hall's Safe Company everywhere else in the United States and the world, may sell its product under certain restrictions against deceit either by itself, its agents, your petitioner, Donnell Safe Company, or any one else?

This inquiry is imperative in this, that upon an identical state of facts, governing and controlling the learned Courts of Appeals for the Sixth and Seventh Circuits, have reached conclusions wholly different and opposed to each other. In the judgment of the learned Court of Appeals for the Sixth Circuit, the product of Hall's Safe Company, by that trade name, may be made and be sold upon restrictions as to deception to the public that will fairly inform all intending purchasers that the safes and vaults made by the Messrs. Hall, using their family name, is not the product of the successors of the original Hall's Safe and Lock Company of Ohio. In the opinion of the learned Court of Appeals for the Seventh Circuit, such manufacture and sale is prohibited without condition. Both opinions cannot be right. Which, if either, is?

This leads us to an examination of the authorities, but we believe one case only recently decided by this court establishes the following propositions definitely and finally:

I.

A family surname is incapable of exclusive appropriation by anyone as against others of the same name, who are using it legitimately in their own business.

II.

In the absence of contract, fraud or estoppel any man may use his own name in all legitimate ways and as the whole or part of a corporate name.

III.

One corporation is not entitled to restrain another from using in its corporate title the name to which others have a common right.

IV.

The essence of the wrong in unfair competition, consists in the sale of the goods of one manufacturer or vendor, for those of another. And if competition is so conducted as not to mislead the public nor palm off the goods of one as those of another, no wrong exists.

V.

The right of the individual to use his own name, reputation and experience in that business or occupation for which he is best fitted, is important to the public as well as to the individual, and to deprive him of that right is in restraint of trade and against public policy.

VI.

The stockholders of a corporation which has sold its property, business and good will and has been dissolved, in the absence of individual contracts not to engage in competition, or after the expiration of such contracts by limitation, may engage in competition to the same extent as anyone else.

Howe Scale Co. v. *Wyckoff, et al,* 198 U. S., 118.

Brown Chemical Co. v. *Meyer,* 139 U. S., 540.

Singer Mfg. Co. v. *June Mfg. Co.,* 163 U. S., 169.

Elgin National Watch Co. v. *Illinois Watch Co.,* 179 U. S., page 665.

Goodyear Indian Rubber Mfg. Co. v. *Goodyear Rubber Co.,* 128 U. S., 598.

Canal Co. v. *Clark,* 13 Wall., 311.

Columbia Mill Co. v. *Alcorn,* 150 U. S., 460.

Lawrence Mfg. Co. v. *Tenn. Mfg. Co.,* 138 U. S., 537.

McLean v. *Fleming,* 96 U. S., 645.

Coats v. *Merrick Thread Co.,* 149 U. S., 562.

Oregon Steam Navigation Co. v. *Winsor,* 20 Wall., 64.

Very many other cases reported in the federal and state courts and the courts of England are in harmony with this court, but we need not cite them.

The most recent case on this subject is that of *Howe Scale Company* v. *Wyckoff, et al., supra,* which establishes the erroneous nature of the decree complained of. In that case Mr. Chief Justice FULLER speaking for this court said:

> "It is said that the use of the word 'Remington' in the name 'Remington-Sholes' was unnecessary as if necessity were the absolute test of the right to use. But a person is not obliged to abandon the use of his name, or to unreasonably restrict it. The question is, whether his use is reasonable and honest, or is calculated to deceive. It is a question of evidence in each case whether there is false representation or not. *Burgess* v. *Burgess,* 3 De G. M. & G., 896."

In the case cited by the learned Chief Justice, one John Burgess carried on an extensive trade in the manufacture and sale of fish and other sauces in London at 107 Strand. Among other sauces which he manufactured was one called "Essence of Anchovies." The plaintiff was a son of John Burgess, in partnership with his father, and continued the business at the same place after his father's death. The plaintiff had two sons, William Harding and John James, whom he employed. Afterwards, William Harding Burgess started in the same line of business for himself. Over his shop he put the words "W. H. Burgess, late of 107 Strand," and on the side of his shop door a plate with the words "Burgess's Fish Sauce Warehouse, late of 107 Strand." In his advertisement he followed closely the advertisement of the plaintiff. The plaintiff brought suit for an injunction and Vice Chancellor Kindersley restrained the defendant from continuing to use the words after his name, "*late of* 107 *Strand,*" and also the word's "*Burgess's Fish Sauce warehouse, late of* 107 *Strand,*" but refused to enjoin the defendant, W. H. Burgess in any other respect. On appeal, the Lord Justice Turner de-

livered the following opinion from which the quotation found in the opinion in this court in the *Howe Scale Company* case was extracted.

> "I concur in the opinion that this motion should be refused with costs. No man can have any right to represent his goods as the goods of another person, but in applications of this kind, it must be made out that the defendant is selling his own goods as the goods of another. Where a person is selling goods under a particular name, and another person, not having that name, is using it, it may be presumed that he so uses it to represent the goods sold by himself as the goods of the person whose name he uses; but where the defendant sells goods under his own name, and it happens that the plaintiff has the same name, it does not follow that the defendant is selling his goods as the goods of the plaintiff. It is a question of evidence in each case, whether there is false representation or not. Looking at the labels before us, I think it is clear that, since the order made by the Vice Chancellor, there has been no representation made on the part of the defendant that the goods which he is selling are the goods manufactured by the plaintiff."

Lord Justice Knight Bruce also delivered an opinion, which has been referred to as epigrammatic, as follows:

> "All the Queen's subjects have a right, if they will, to manufacture and sell pickles and sauces, and not the less that their fathers have done so before them. All the Queen's subjects have a right to sell these articles in their own names, and not the less so that they bear the same name as their fathers; nor is there anything else that this defendant has done in question before us. He follows the same trade as that his father follows and has long followed, namely, that of a manufacturer and seller of

pickles, preserves, and sauces; among them, one called 'essence of anchovies.' He carries on the business under his own name, and sells his essence of anchovies as 'Burgess's Essence of Anchovies,' which in truth it is. If any circumstance of fraud, now material, had accompanied, and were continuing to accompany, the case, it would stand very differently; but the whole case lies in what I have stated. The whole ground of complaint is the great celebrity which, during many years, has been possessed by the elder Mr. Burgess' essence of anchovies. That does not give him such exclusive right, such a monopoly, such a privilege, as to prevent any man from making essence of anchovies, and selling it under his own name. Without, therefore, questioning any one of the authorities cited, all of which I assume to have been correctly decided, I think that there is here no case for an injunction."

Lord Esher, commenting on it, in a later case, said:

"I do not think that a truthful proposition is a bit worse because it is put in an epigrammatic form. It fixes the proposition on one's memory and when I look at the judgment of Lord Justice Knight Bruce, I can see no difference in the smallest respect between that judgment and the judgment of Lord Justice Turner, which immediately follows it except in the form of expression."

Turton v. *Turton*, L. R. 42 Chancery Division, 128, 136.

In *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict, supra,* this court said:

"We hold that in the absence of contract, fraud or estoppel any man may use his own name in all legitimate ways and as the whole or any part of a corporate name and, in our view, defendant's name and trade-mark were not in-

tended or likely to deceive, and there was nothing of substance shown in defendant's conduct in their use constituting unfair competition or calling for the imposition of restrictions lest actionable injury might result as may confessedly be done in a proper case."

The original Hall's Safe and Lock Company had been out of business for many years at the time when this suit was started and it seems almost fanciful to suppose that one purchaser in ten would care at all whether he was buying a safe from the successors in interest of that corporation or not. It seems much more reasonable to suppose that he would feel better satisfied if he desired a Hall Safe to purchase one from the sons of the original vendor of that safe business than a safe made by a trade successor. Indeed, it would seem that it would hardly be necessary to impose the restrictions upon the sale of their product decreed against the Hall's Safe Company by the Circuit Court of Appeals for the Sixth Circuit.

The decree here objected to is so gravely wrong in its extreme breadth, that it should not be permitted to stand. It was claimed in the trial court and in the Court of Appeals for the Seventh Circuit, and it is insisted upon now that the decree here in question, cannot be sustained unless it shall be held that the Herring-Hall-Marvin Safe Company has the *exclusive right* to the use of the name Hall in the manufacture and sale of safes and vaults. We submit the decree is wrong because it is contrary to the law laid down by this court in *Howe Scale Company* v. *Wyckoff, Seamans & Benedict, supra*, as well as opposed to the well considered decisions of many other courts of great respectability.

This court has said in the *Howe Scale Company* case, *supra:*

> "It is well settled that a personal name cannot be exclusively appropriated by anyone as against others having a right to use it. * * * We hold that in the absence of contract, fraud or estoppel any man may use his own name in all legitimate ways and as the whole or part of a corporate name."

There is in this case *no* contract and by a proper use of the name the other exceptions mentioned by this court in the foregoing extract from the opinion can be provided against by an appropriate decree.

With reference to the matter of fraud or estoppel, as before stated, we deem it unnecessary to justify the acts of petitioner in organizing the Illinois corporation as The Hall Safe and Lock Company of Illinois, except in so far as we think it is shown he did so believing that he had a legal right so to do and he did so with the acquiescence or at least without the objection of the corporation organized by the Hall brothers, or the Herring-Hall-Marvin Safe Company. (Trans., 107-115-116-119-131-231-260-261-262.)

Any fraud or estoppel so far as the manufacturer The Hall's Safe Company is concerned, is very fully and almost unnecessarily guarded by the decree entered by the learned Court of Appeals for the Sixth Circuit.

The learned Court of Appeals for the Sixth Circuit, which had before it, and considered the opinion of the learned Court of Appeals for the Seventh Circuit, and expressly referred to it in its decision, *Hall's Safe Co.* v. *Herring-Hall-Marvin Safe Com-*

pany, 146 Fed. Rep., 37, reversed the decree of the Circuit Court for the Southern District of Ohio in so far as the Hall Brothers were concerned and modified the injunction granted by substituting in lieu of the sweeping decree entered by the Circuit Court, an injunction enjoining:

> "The defendant, the Hall's Safe Company, its servants, agents, officers and employes from carrying on the safe or vault business in the name of The Hall's Safe Company, or any other name having similarity to the name Hall's Safe and Lock Company without also giving information to the public that it is not the business formerly carried on by the Hall's Safe and Lock Company, and from marking, advertising or otherwise designating its safes and vaults as the products of Hall's Safe and Lock Company, or its successors in business or pretending that it is carrying on the business started by Joseph Hall and continued by the Hall's Safe and Lock Company and from interfering in any manner with the exclusive right of the complainant to possess and enjoy the good will acquired by the Hall's Safe and Lock Company and from using the trade name of said last named company without at the same time so qualifying such trade name as to show that the trade name used is not the one formerly used to designate the products of the Hall's Safe and Lock Company."

By the decree of the learned Court of Appeals for the Seventh Circuit, the decree of the Circuit Court, granted in pursuance of the prayer of the cross-bill, enjoined your petitioner

> "From carrying on the safe and vault business in the name of Hall's Safe and Lock Company, or any name of which the name Hall is a part, and from marking their safes with any name of which the word 'Hall' is a part, or

> from advertising or offering for sale safes or vaults as 'Hall's Safes' or by any name of which the word 'Hall' is a part, except or unless the safes so offered shall have been actually made and manufactured by the original Hall's Safe and Lock Company of Ohio, or its successors in business, the Herring-Hall-Marvin Company, the receivers thereof, or the Herring-Hall-Marvin Safe Company."

It thus appears that by the decree of the learned Court of Appeals for the Seventh Circuit, the product of the Hall's Safe Company of Ohio, may not be sold by petitioner, with or without any explanation as to source of manufacture, thus depriving him of the right to sell a product in one circuit that is freely permitted to be manufactured and sold by everyone elsewhere provided at all times that proper explanation as to source of manufacture is given. Moreover, not only is petitioner deprived of the right to sell, but the Hall's Safe Company of Ohio is also deprived of the right to sell within the limits of the Seventh Circuit, either through petitioner or through anybody else, and if it or any one other than petitioner, should attempt to sell the product of the Hall's Safe Company, it or they could be promptly enjoined under the decree of that learned court.

It is well to bear in mind that the Hall's Safe Company was not a party to this proceeding in any way. This fact did not, of course, escape the attention of the learned Court of Appeals for the Seventh Circuit because it is thus commented upon by it in its opinion:

> "The question, therefore, whether the appellee's (Herring-Hall-Marvin Safe Company)

rights in the name 'Hall' as applied to its safes are exclusive, thus arises for review under the scope of the decree. We do not understand from the brief or oral argument of counsel for appellants, that it is contended that use of this trade name by appellee was without right, and certainly the rightful use is not questionable under the terms of the conveyance and the subsequent participation by the Hall family in such use—but the contention is that the right is not exclusive, and that the Hall family, at least, have an unrestricted right to employ the name in their rival trade. In other words, the only issue is, whether the conceded like use by the Ohio manufacturer, Hall's Safe Company, is legitimate. It must be determined as between the parties to this record for the reason that the contention for modification of the decree rests solely on the assumed rightfulness of the manufacturer's adoption of the name; so that neither the fact that the Ohio corporation is not present as a party, nor the more embarrassing fact that litigation is now pending between that corporation and the present appellee, involving the same issue, will justify evasion of the inquiry."

Nor did the conduct of the Illinois corporation and the alleged misconduct have any bearing upon the decision because the court says:

> "Unless the rights of the appellee are exclusive in the trade name 'Hall' as applied to their safes and vaults, irrespective of the just limitations in its use on the part of appellants arising out of their prior trade relation with appellee, it is obvious that the decree cannot be upheld without modification."

In other words, there was no question and there can be no question now, that in the judgment of the learned Court of Appeals for the Seventh Circuit,

Herring-Hall-Marvin Safe Company possesses the sole and exclusive right to use the name "Hall" in the manufacture and sale of safes and that the sons of Joseph L. Hall, the founder of Hall's Safe and Lock Company have no right to use their family surname in that business. This alone is clearly with great deference, we submit, reversible error.

Further analysis of the opinion of the learned Court of Appeals for the Seventh Circuit, shows that it is assumed that certain contract relations existed between respondent, Herring-Hall-Marvin Safe Company, and Edward C. and William H. Hall, by reason of their participation as stockholders in the sale of the old Hall's Safe and Lock Company's assets to the Herring-Hall-Marvin Company, and their employment by the latter company which prohibited them from using in the safe business the surname "Hall" either as a part of a corporate name or as descriptive of their products.

The facts with reference to that subject, are fully contained in the record and are briefly as follows:

Edward C. Hall and William H. Hall were stockholders, officers and directors of Hall's Safe and Lock Company when in May, 1892, that corporation conveyed by bill of sale, its assets and good will to the Herring-Hall-Marvin Company. It may be fully and freely conceded that the conveyance of its good will barred the corporation from ever afterwards resuming business using that or a similar corporate title. No such contract was made by the stockholders. No contract relation existed preventing in any way, shape or manner individual stockholders from using their own names in the safe

business, either as persons or in a corporate title, except in the limited covenant made by the two Halls effective only while they remained with the new company and ineffective upon their release and discharge from their obligations to the new company. This question was fully considered by both learned Courts of Appeal. The cases cited in support of the proposition that the acts of a corporation bound the stockholders, officers and directors of that corporation, were

McKinly v. *Wheeler*, 130 U. S., 630, and

Anthony v. *American Glucose Co.*, 146 N. Y., 407,

and discussing those cases, Mr. Justice SEAMAN, speaking for the Seventh Circuit, said:

> "The general rule for which the appellants contend that the family surname is incapable of exclusive appropriation by anyone, as against others of the same name, who are using it legitimately in their own business, is too well settled to require citation or review of authorities. But the exceptions above mentioned, which makes the use illegitimate, are equally well settled, and we are of opinion that the general rule is not applicable to the trade name 'Hall' thus applied to the product of the new corporation and that the use was both fraudulent and in derogation of the rights acquired by the appellee under the conveyance by the original Hall corporation. The fact that such conveyance was not executed by the Halls, as individuals, cannot absolve them from the obligations of a contract made in a corporate name wherein they are individually the beneficiaries. As stated in *McKinly* v. *Wheeler*, 130 U. S., 630, 636, 'the court, when necessary, will look beyond the name of the corporation to the individuals whom it represents.' See opinion of Judge Baker, speaking for this court in *Seamens-*

> *Halske Electric Co.* v. *Duncan Electric Mfg. Co., et al.*, decided October 3, 1905. The corporate form of the transfer will not be permitted 'to distort or hide the truth (*Anthony* v. *American Glucose Company*, 146 New York, 407, 413), but a court of equity will treat the contract in conformity with its true meaning.'"

Mr. Justice SEVERENS, speaking for the learned Court of Appeals for the Sixth Circuit, said, referring to *McKinly* v. *Wheeler, supra*, and *Anthony* v. *American Glucose Co., supra*, as

> "cases cited to support their contention that the court may look through the form of the corporate organization and fasten upon the stockholders a liability for the acts of the corporation, do not support such a doctrine as applicable to contract relations. They were all cases where for special purposes and under special circumstances the court held that it was competent and proper to regard the rights and duties of stockholders in corporations. None of them impugns the general rule above stated that in matters of contract the officers and agents of a corporation are not bound personally by stipulations made by them in behalf of their principal. This rule is not affected by the circumstances that they are indirectly interested as stockholders in the contracts of their corporation. If it were so, it would break down all distinction between the corporate entity and its component parts."

The opinion of the Circuit Court of Appeals for the Seventh Circuit was delivered January 11, 1906, and the opinion of the Sixth Circuit on June 20, 1906. From a further examination of the opinion of the latter court it will appear that it carefully considered another feature in the opinion of the Court of Appeals for the Seventh Circuit. Mr. Justice SEVERENS said:

"It is true that the learned judge who delivered the opinion said *arguendo* that the court might look behind the corporation and find whether there were equities between the Harring-Hall-Marvin Company and the members of Hall's Safe and Lock Company, which would attach to Hall's Safe Company, of which they are now members, and concluding there were such equities, proceeded to deduce the consequences. Without repeating what we have said upon this subject, we are constrained to think that defendants, Hall, were not bound individually in law or in equity by the contract of their corporation."

The discussion of the vital question by the learned court below is somewhat meagre. It is substantially all contained in that portion of the opinion beginning at the third line from the bottom, page 387, of the transcript and running over the next page.

The learned court announces the conclusion that under some supposed exceptions to the rule laid down by this court in *Howe Scale Co.* v. *Wyckoff* the use by the Halls of their own name was both fraudulent and in derogation of the rights acquired by the appellee under the conveyance by the original Hall corporation, and then observes, as already quoted:

> "The fact that such conveyance was not executed by the Halls as individuals cannot absolve them from the obligations of a contract made in the corporate name wherein they were individually the beneficiaries."

This is certainly a very startling proposition when it is remembered that they did *as individuals* sign written contracts on this very subject. When it is further understood that the only way in which

the Halls were beneficiaries in this contract was that they were shareholders and officers in the corporation which made it and took service with the purchasing company, it is quite inconceivable that there is any such general principle of law as that which the learned court thus stated. That is was not merely an inadvertance is apparent by the conclusion reached by the court, which is that the Halls are virtually parties to the contract and may, therefore, be enjoined accordingly.

On this theory the same result would have been reached if the persons organizing a new company to carry on the same business as the old company in competition with the New Jersey company had been named, for instance, Thompson instead of Hall. Suppose that two men of that name had been stockholders in the old Hall Company at the time it had sold its property, good will, etc., to the combination and had been officers in that company and as such officers had negotiated and executed the conveyance through which the combination acquired title and entered the service of the purchaser. That document contains a covenant on the part of the Hall Safe and Lock Company by which that company binds itself not thereafter to engage in or carry on any business whatsoever and that it will as soon as practicable pay and discharge all its debts and liabilities, go into liquidation and procure itself to be wound up and dissolved in accordance with the laws of the State of Ohio.

On the question whether by this covenant individuals thus related to the transaction are bound, what their names are is immaterial.

If the reasoning of the learned court below is sound, the officers of the Hall Company under such circumstances, even though their names were not Hall, could not organize a company employing their own name in its corporate name and carry on business in competition with the combination because as officers and stockholders in the Hall Company they must be regarded as bound by the covenants of that company and because such competition would be, to the extent of their identification with the business of the old Company, injurious and harmful to the purchaser.

It would seem that to state this proposition is all that is necessary to demonstrate its essential unsoundness. Certainly no principle is better settled in the construction of contracts of this character than that they are to be strictly construed and impose no restraint upon trade or the useful activities of men beyond that which is clearly expressed by the language of the covenant.

But even upon the broadest and most liberal principles of construction it is quite impossible, if so much may be said with deference to the court below, to sustain its conclusion in this regard. It would appear as if that learned court in the effort to find some proposition of law upon which it could base its decision, induced undoubtedly by the idea referred to in the opinion that this use of the Hall name by the sons of Joseph L. Hall was fraudulent, had been led to a position that is quite untenable.

But this is not all. Whether this court can take judicial notice of the fact or not, it is not unusual where a corporation sells its plant, property, good

will, etc., to another, to seek by contract to secure the services of those who have been long connected with the selling corporation and are identified in the trade with its business and product and in the same way to guard against their competition thereafter with the purchaser as well as against that of the selling corporation itself. That is precisely what was done in this case, as has been already stated. Both Edward C. Hall and William H. Hall entered into contracts with the Herring-Hall-Marvin Company, covering this point. The contract of Edward C. Hall provided that he would hold the office of president of the new company, and would devote all of his time and give his best energies to promoting the business of that company in that office and otherwise at a stipulated salary. This contract also contained a covenant that Mr. Hall would not *so long as the company might desire to retain his services,* as above indicated, engage either in the State of Ohio or of New Jersey or in any of the states east of the Mississippi in the business of manufacturing, selling, buying or dealing in fire or burglar proof vaults and safes, or in any business or occupation such as the Hall Safe and Lock Company was authorized or empowered to engage in, or in any other business which would or might compete or interfere in any manner with the business of the Herring-Hall-Marvin Company. (Trans., 233.)

The contract of William H. Hall provided that he should hold the office of treasurer and contained similar provisions to those just recited and a similar covenant.

It would appear, therefore, to be quite clear that

the purchasing company did not suppose that its contract with the selling company was susceptible of any such construction as that which the learned court below has sought to give it, and therefore, in order to secure the rights which apparently its learned counsel now claim against the Messrs. Hall, by virtue of the contract with the company, it took personal contracts from those gentlemen specifying distinctly the extent and nature of their several obligations towards the purchasing company.

If the question were otherwise doubtful, it is quite apparent that in view of these definite written contracts between the purchasing company and the Messrs. Hall, which attempt apparently clearly to prescribe the nature and extent of the obligations in respect of active service and of restrictive engagements which the Messrs. Hall assumed towards that company, it would be quite impossible, upon any sound principle of construction, to extend those obligations beyond the terms of these personal contracts. If, in the absence of these contracts, upon any possible theory some sort of equitable obligation could have been imposed upon these gentlemen in virtue of their relation to the selling company and their participation in the negotiations preceding its sale to the new company and in the execution of the contract of conveyance to the latter company, the express provisions of the definite written contracts between them and the new company would certainly displace any vague inference of law that might thus be sought to be drawn against them on the principle that where parties enter into an express contract touching certain matters, this is re-

garded as embodying their agreement in its full extent and no further or different contract can be raised by implication of law.

There is no claim nor suggestion that either the Hall Company nor the Halls as individuals did not fully, fairly and exactly perform their several agreements in this regard.

These gentlemen had been in this business all their lives, during his lifetime, with their father. When that business was sold out to the New Jersey corporation and after that corporation in which the Halls held considerable stock had proved to be in a measure unsuccessful and after it had dispensed with the services of these gentlemen under contracts which plainly seemed to contemplate that in this contingency they should be free to go into the old business, what is more natural than that they should engage in it and of course under their own names? It is not possible upon any clear view to uphold the position of the court below that their right to do so has been in any way lost or impaired by contract.

The learned court below concedes (Trans., 387) that this was their right unless barred by contract, estoppel or fraud. That this right has not been lost by contract is, we think, demonstrable. There is no element of estoppel suggested and no definite suggestion of fraud. If it be true, as said by the Lord Justice Knight Bruce, that "all the Queen's subjects have a right, if they will, to manufacture and sell pickles and sauces and not the less that their fathers have done so before them and that all the Queen's subjects have the right to sell these articles in their

own names and not the less so that they bear the same name as their fathers,—it is equally true that all the citizens of the great Republic, if they have not contracted away this right, have the right, if they will, to manufacture and sell safes, not the less that their fathers have done so before them and have also the right to carry on such business in their own and in their fathers' names.

Certainly it must be conceded that the Halls would not have a right to sell their safes under such circumstances as to induce a belief in intending purchasers that they were the successors of the first Hall enterprise, except to the extent that the facts warranted; that is to say, they ought not to be permitted to hold themselves out as carrying on the same business as the successors by purchase of the old Hall business. The Circuit Court of Appeals for the Sixth Circuit having this in mind, held that the present Hall Safe Company might be properly enjoined from carrying on its business in that name without also giving information to the public that this is not the business formerly carried on by the Hall Safe and Lock Company, which was the original company, and from making and advertising its safes and vaults as the products of that company or its successors in business, etc. It is not necessary for the purposes of this case to combat this theory; that is a question perhaps which may be more appropriately discussed by counsel in No. 136, this term, in which certiorari was granted upon the petition to bring up the case decided in the Sixth Circuit.

The vital point is that there is no right to enjoin

the Halls from carrying on this business in their own name which arises from contract; and consequently no right to enjoin this petitioner from selling their product in the great market offered by Chicago; and that the only restraint which the respondent, the Herring-Hall-Marvin Safe Company is entitled to have imposed either upon the Halls or the petitioner is such as is necessary, all things being considered, to prevent them from deceiving the public into believing that the goods they sell are in fact those of the original Hall Safe and Lock Company or its lineal successor.

There is, however, no warrant of law for so stringent a provision as that directed by the court in the Sixth Circuit.

In *Burgess* v. *Burgess* the only requirement was that the defendant should cease to represent himself as the successor to his father's business. This he had done contrary to the fact as it is claimed the Halls did here. No effort was made to compel him to advise the public that he was not his father's successor. The truth is the public and the trade do not care half so much about these matters as some courts seem to suppose; and it is time the rather fantastic and sentimental notions of some of our federal judges at the circuit, countenanced as they have been to some extent by the Courts of Appeals, were corrected by a sober and judicious application of correct legal principles.

There is really nothing to be done in this case in the way of argument except to get the facts clearly before the court and then leave the case to be determined on the law so recently and clearly laid down by this court in the case referred to.

There can be no mistake on the question of fact, it clearly appearing that the corporation Hall's Safe and Lock Company, made and delivered its bill of sale covering its assets, including good will, as a corporate act, and that at the same time, the Hall Brothers entered into personal contracts of employment.

It further appears that the learned Court of Appeals for the Sixth Circuit, held that if the Herring-Hall-Marvin Company had desired to make the officers and agents of the selling corporation, subject to the stipulations of the company in the contract of sale, it should have required their personal agreement to that effect.

It must be conceded that the decision complained of is based upon the statement that the Hall Brothers "participated," or were in reality or in equity, parties to the conveyance. This, we think, we have shown, is error, legally speaking, and that as a matter of fact the Hall Brothers did not contract personally, and, as a matter of law, are not bound. Indeed, it is by inference at any rate, admitted in the opinion of the learned Court of Appeals for the Seventh Circuit, that in the absence of such contract relations between the Herring-Hall-Marvin Company and the Messrs. Hall, the decree would have been too broad as entered and would have to be modified, but that owing to the fact that the corporation of which the Messrs. Hall were stockholders, had sold, bargained and granted the good will of the selling corporation, they were bound personally to refrain from ever using that name in a competitive business or designating safes or vaults of

their product upon any corporate name of which the word "Hall" was a part. It is true, doubtless, that for purposes of remedy courts will, when necessary, look through the corporation to the stockholders. With questions of contract, courts consider the corporation and its stockholders as wholly distinct. The contract in this case, it must be admitted, was made by the corporation. It does not convey or purport to convey the individual rights of any stockholder either to go into like business or to use the family name in that business. The theory upon which the decision is predicated is that upon consenting to the making of the contract by the corporation, each stockholder became a personal party to it. The corporation agreed that it would not thereafter engage in the safe business, but by so doing, the stockholders did not so agree. Assent to corporate action must not be confounded with a contract for personal action. In addition to the authorities referred to by Mr. Justice Severens, in delivering the opinion of the court for the Sixth Circuit, we submit the language of Mr. Chief Justice TANEY in *Bank of Augusta* v. *Earl*, 13 Peters, 518, is in point:

> "Whenever a corporation makes a contract, it is the contract of the legal entity, of the artificial being created by the charter and not the contract of the individual members."

We do not emphasize the fact that because the Hall's Safe Company was not a party to the suit the learned Court of Appeals for the Seventh Circuit, should not have adjudicated anything regarding it, as that is too simple a proposition to merit discussion, but it is worthy of note that if petitioner is prohibited from selling the product of the Hall's

Safe Company, as such, under any circumstances, injunctive relief of the same drastic character could be obtained against any one, who would seek to become the selling agents of the Hall's Safe Company, or dealers of its products within the limits of the Seventh Circuit.

Indeed, Mr. Justice Seaman, while sitting as district judge in the case of *Grand Trunk R. R. Co.* v. *Chicago & E. I. R. Co.*, 73 C. C. A., 43, held that a defendant could not be required to litigate questions which primarily and directly involve issues of third parties not before the court. See opinion by Mr. Justice Jenkins in that case on appeal, on page 58, referring to the language of Mr. Justice Seaman, and citing *Swan Land & Cattle Co.* v. *Frank*, 148 U. S., 603, and *Minnesota* v. *Northern Securities Company*, 184 U. S., 199.

We submit, in conclusion of the discussion of the two conflicting opinions, that the question involved is of great moment and gravity. Both decisions cannot be correct, nor can they be so reconciled as to avoid misapprehension and confusion. Furthermore, the question involved is of such great commercial importance that there should be no diversity or contrariety of opinion on the subject of unfair trade or unfair competition, which will inevitably exist if both of these decrees and decisions are allowed to stand. We think no examination of the evidence is necessary because both courts agreed that the only contract was the corporate contract. The facts are in no wise disputed. It is not claimed that the Halls executed any contract personally, except the restrictive covenants to continue only dur-

ing their period of service, with Herring-Hall-Marvin Company, and from which they were expressly released when they left that company and before they organized the Hall's Safe Company, the present Cincinnati corporation, but it is held by one court and denied by the other that because they and their family were stockholders in the corporation which conveyed its assets and good will, and they thus profited in the distribution of the purchase price, and because of that fact alone, they are bound to abandon a business in which they have been engaged for their entire lives and which is the only business they know, without the use of the name they bear, which in law, in the absence of contract, they have a perfect right to use in all legitimate ways.

Whatever rights and obligations might, in the absence of express contract, have been implied in law on the relation of the two Halls to the old Hall Company, the sale by that company to the Herring-Hall-Marvin Company, and the connection of the Halls in the latter company, the parties saw fit to enter into express written contracts, and these contracts must be taken as the measure of their relative rights and duties upon the principle already stated that where parties enter into an express contract touching a certain matter, this must be regarded as embodying their agreement in its full exent, and no further or other contract can be implied. It is not claimed or suggested that either the old Hall Company or the Hall's individually did not fully, fairly and exactly perform their respective agreements in this regard. The learned Court of Appeals below, therefore, if

so much may be said, with deference, errs in referring to this case as one in which the element of contract cuts any figure.

Since the decision by this court of *Howe Scale Company* v. *Wyckoff, et al., supra,* the federal courts have had occasion to consider questions of unfair trade with reference to the doctrine announced by this court in the case last mentioned.

In *Bates Mfg. Co.* v. *D. Bates Mch. Co.,* 141 Fed. Rep., 213, LANNING, District Judge, said:

> "In *Howe Scale Co.* v. *Wyckoff, etc.,* 198 U. S., on page 140, it was said: 'We hold that in the absence of contract, fraud or estoppel any man may use his own name in all legitimate ways and as the whole or a part of a corporate name.'"

The facts in the *Bates Mfg. Co. case supra,* were these:

Edwin G. Bates and Samuel Insull in 1890, caused to be organized under the laws of the State of New York, the Bates Mfg. Co. for the manufacture and sale of numbering machines under patents, inventions, and processes theretofore owned by Mr. Bates. Bates thereupon assigned his patents to the corporation taking a part of its capital stock in consideration therefor. The company started its business with Bates as its general manager. In 1895 Bates sold out his stock and withdrew from the corporation. He thereupon began the manufacture and sale of numbering machines on his own account, and seems to have built up a business until some time in 1899 when he caused the Bates Machinery Company to be organized under the laws of New Jersey, and the latter company in 1904, put upon the market a

new hand numbering machine known as Number 149. This machine came in direct competition with certain of the machines of the Bates Mfg. Co. Bates Mfg. Co., as complainant, sought a preliminary injunction restraining the defendant, Bates Machinery Company, from 1st, using the name "Bates" in connection with the sale of automatic hand numbering machines; and 2nd, from imitating the labels on the boxes in which the complainant's machines are packed and placed upon the market.

The complainant contended that the defendant had no right to use the name Bates in connection with the sale of automatic numbering machines. This contention was founded on the assertion that Bates, when he became a party to the organization of complainant company in 1890, assigned to the corporation the sole and exclusive right to the use of his name in the manufacture and sale of hand numbering machines. The court said:

> "But in the proofs submitted by the defendant company this assertion is denied. A written agreement executed by Edwin G. Bates and Samuel Insul on September 30, 1890, is in evidence, but there is nothing in it to support the contention. If Bates transferred to the complainant company the exclusive right to use his name in the business above referred to, it must have been by some method not clearly disclosed in the proofs."

Von Faber and Castell v. *Faber*, 139 Fed. Rep., 257, was a case on appeal from the Circuit Court for the Southern District of New York, in which a decree for injunction, was reversed. COXE, Circuit Judge, speaking for the Court of Appeals, saying:

"In the recent case of *Howe Company* v. *Wyckoff, et al,* decided April 24, 1905, the Supreme Court has reasserted and reaffirmed in clear and unequivocal language, the right of every man to use his own name in all legitimate ways."

Indeed, the great weight of authority prior to the decision of the Howe Scale case, by this court, has been in conformity with the principles there announced. In the opinion of the learned Court of Appeals herein, after referring to the case of *Howe Scale Company* v. *Wyckoff, et al., supra,* this is said:

"The general rule for which the appellants contend,—that the family surname is 'incapable of exclusive appropriation by any one, as against other of the same name who are using it legitimately in their own business'—is too well settled to require citation or review of the authorities. But the exceptions above mentioned, which makes the use illegitimate, are equally well settled, and we are of opinion that the general rule is not applicable to the trade name 'Hall' thus applied to the product of the new corporation (The Hall's Safe Company) and that the use was both fraudulent and in derogation of the rights acquired by the appellee (Herring-Hall-Marvin Safe Company) under the conveyance by the original Hall corporation. * * *

"The recent decision in *Howe Scale Company* v. *Wyckoff, Seaman & Benedict, supra,* is relied upon by the appellants for support of their contention that the Halls were not deprived of the right to use the family surname by these transactions, but we are satisfied that the case is plainly distinguishable; that the contract elements above mentioned in the case at bar were not there present, and the decision was expressly grounded upon the absence of such obligations, together with the absence of deception

> or confusion in the use of the name Remington; and that the elements thus appearing in the present case are unmistakably recognized as excepted from the rule thus upheld."

With the greatest deference, we insist that there were no "contract elements" binding the Halls as individuals, nor deception, nor confusion not remediable by proper restrictions in a modified decree in that regard and that it is not possible to distinguish the situation here from the situation developed in *Howe Scale Company* v. *Wyckoff, et al, supra,* and that the controlling basic features of both cases are identical and that the conclusion reached by the learned Circuit Court of Appeals is in contravention of the opinion of this court.

We submit that the decree of the learned court of Appeals should be reversed with such directions only as to regulations and restrictions, if deemed necessary, as the canons of fair trade and honest competition require.

Respectfully submitted.

GEORGE P. MERRICK,
S. S. GREGORY,
Counsel for Petitioner.

APPENDIX.

No. 1494.

UNITED STATES CIRCUIT COURT OF APPEALS,

Sixth Circuit.

Halls Safe Company, Edward C. Hall, William H. Hall, and Charles O. Hall, *Appellants*, *vs.* Herring-Hall-Marvin Safe Company, *Appellee.*	Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Submitted April 4, 1906.
Decided June 5, 1906.

Before LURTON, SEVERENS and RICHARDS, Circuit Judges.

SEVERENS, Circuit Judge, delivered the opinion of the court.

The parties to this controversy are engaged in the business of manufacturing and selling safes. The complainant is a corporation organized under the laws of New Jersey. The defendant, The Hall's Safe Company, is an Ohio corporation, and the other defendants are citizens of that state. The bill was filed for the purpose of obtaining an injunction restraining the defendants from carrying on the business of manufacturing or selling fire proof, or burglar proof safes or vaults under the name of "The

Hall's Safe Company," or under any other trade name substantially or essentially the same and calculated to deceive the public or intending purchasers into the belief that they are dealing with the complainant, or with the establishment founded by Joseph C. Hall and carried on by complainant, when they are dealing with the defendants, and from advertising their products as "Hall's Safes" and from marking them with that name; and for the recovery of profits and damages already lost and suffered by the complainant from acts of the like character. And there was a prayer for general relief.

The facts, about which there is not much controversy, are these: From about the year 1847 to 1867, one Joseph L. Hall had, in successive co-partnerships with other persons, been engaged at Cincinnati, Ohio, in the manufacture and sale of fire and burglar proof safes. In this business he had been the principal and managing member of his firms. In the latter year (1867) he with other persons organized a corporation under the laws of Ohio by the name of "Hall's Safe & Lock Company" for the purpose of carying on the same business. Its factory and principal office were located at Cincinnati, and its business of selling safes extended throughout the United States and into foreign countries. Its safes were known as "Hall's Safes" and "Hall's Standard Safes," and certain styles of them were marked "Hall's Standard Safes," and the safes had a good reputation. In March, 1889, the said Joseph L. Hall, who was at that time the principal stockholder in the corporation last mentioned died. His sons, Edward C., William H. and Charles O. Hall,

were also stockholders. The first two became successively presidents of the corporation. The stock of Joseph L. Hall continued part of his estate and the business went on as before until May 4, 1892, when the corporation sold to the Herring-Hall-Marvin Company, a New Jersey corporation, all its "real estate and leasehold interests, tools, machinery, fixtures, merchandise, trade marks, trade names and good will"; and the Hall's Safe & Lock Company covenanted and agreed that it would close up its affairs and be dissolved, and would not in the future engage or continue in said business. This sale and agreement was assented to by the above named sons of Joseph L. Hall, who are the individuals made defendants in this cause. Edward C. Hall and William H. Hall at or about the date of the transfer became stockholders, (as we must suppose) directors, and respectively president and treasurer of the Herring-Hall-Marvin Company, at stated salaries agreed upon at the time of said transfer. But in 1895, these persons were deposed from their offices and their salaries reduced, and on August 1, 1896, they resigned their offices as directors. Their resignations were accepted, and they withdrew from the company. At the time when these parties became associated with the Herring-Hall-Marvin Company a written agreement with that company was entered into by each of them, which after stating the terms of their employment contained the following stipulation:

"And in consideration as aforesaid, I, the said Edward C. Hall (in the other contract, William H. Hall) do hereby covenant, promise and agree that

I will not, so long as the Herring-Hall-Marvin Company may desire to retain my services as above, engage, either in the state of Ohio, or in the state of New Jersey, or in any of the states east of the Mississippi river, in the business of manufacturing, selling, buying or dealing in fire or burglar proof vaults and safes, or in any business or occupation such as the said corporation known as the Hall's Safe & Lock Company has heretofore been engaged in, or such as the Herring-Hall-Marvin Company is authorized or empowered to engage in, or in any other business which will or may compete or interfere in any manner with the business of the said Herring-Hall-Marvin Company."

In September, 1896, Edward C. Hall, William H. Hall, Charles O. Hall and other persons organized a corporation under the laws of Ohio, by the name of "The Hall Safe Company," the corporate defendant herein, and this company shortly thereafter went into the business of manufacturing and selling safes. A bill in equity was soon after filed in the Circuit Court of the United States against the new company by the Herring-Hall-Marvin Company complaining that the former was infringing its trade and good will and praying for an injunction. While that suit was pending, the Herring-Hall-Marvin Company became insolvent and a receiver was appointed. A new corporation was organized in New Jersey, the complainant in this suit, an order of the court for a sale of the assets of the old company was obtained and the new company became the purchaser in December, 1900, by a deed which purported to convey to the complainant all the real estate, personal prop-

erty, manufacturing plant, tools, machinery, merchandise, assets, franchises, property and good will of the Herring-Hall-Marvin Company. The bill in that case was dismissed upon a ground not now material, but without prejudice. Not long after the present bill was filed by the new company.

The *gravamen* of the complaint is that the defendants invade and injure the good will and reputation of the complainant's business by the adoption of the corporate name of the defendant, "The Hall's Safe Company" and also by inducing the public through advertisements, circulars and other representations to believe that their safes are the product of the complainant's business. The defendants admit the acquisition by complainant of the properties, including the good will, of The Hall Safe & Lock Company, but claim that the individual defendants were not by the sale of the latter company deprived of the right to organize a new company which shall include their family name, and that the name of "Hall's Safe Co." is one which may lawfully be adopted. The defendants also filed a cross-bill in which they charge complainant with unfair conduct in seeking to divert the defendant's trade by false representations concerning it. The complaint of the cross-bill was that the defendant therein had some time prior to the comencement of this suit removed its manufacturing plant from Cincinnati to Dayton, Ohio, and had directed all mail addressed to the Hall Safe & Lock Company at Cincinnati to be forwarded to it at Dayton; and that it was holding itself out as the Hall Safe & Lock Company or Hall Safe & Lock Works, and the like, and was rep-

resenting by its signs, advertisements, publications and stationery that it was the "Successor of Hall's Safe & Lock Co.," or was "Operating Hall's Safe & Lock Works," or was making and selling "Hall's Safes." And upon answer and replication evidence was taken upon those matters. The court below dismissed the cross-bill and decreed for the complainant upon the original bill, awarding an injunction. Complaint is made of the decree, that it is vague and uncertain in respect to the things which the defendants are restrained from doing, a matter to be recurred to later on.

Counsel for complainant contend that it is entitled to the relief it demands by virtue of the contract between it and the Hall Safe & Lock Company by which it acquired the property and good will of the latter company, and that its rights are not to be measured by the rules and principles which apply in the case of unfair competition in trade. And it is argued that this consideration distinguishes the case from that of *Howe Scale Co.* v. *Wyckoff, Seamans, etc.*, 198 U. S., 118, where there was much discussion of the extent of the right of a person to use his own name in the conduct of his business, whether it be his private business or that of a corporate business in which he is associated with others, and reference is made to the language of the chief justice at page 140, where he says:

"We hold that in the absence of contract, fraud or estoppel, any man may use his own name, in all legitimate ways, and as the whole or a part of a corporate name."

Upon this contention it becomes important to de-

termine what were and are the relations between the complainant and its predecessor in title and the several defendants. Undoubtedly the Herring-Hall-Marvin Company acquired by its contract of purchase with the Hall Safe & Lock Company all its physical properties and the good will which it had acquired in its business as well as the right to use such trade names as had been customarily used to identify its products. It acquired also the right to require that the Hall Safe & Lock Company should go out of business, or, in substance, that it should not longer engage in business of the kind which it sold to the Herring-Hall-Marvin Company. But it is contended that the contract reaches beyond the corporation, the Hall Safe & Lock Company, and binds the defendants who were stockholders and officers of the corporation and prevents them and any corporation of which they may become stockholders and managers from doing what the Hall Safe & Lock Company could not do; and the principal reason for this contention is the fact that these individual defendants participated in the sale and as stockholders received its benefits. We are of opinion that this proposition cannot be sustained. The contract which the Herring-Hall-Marvin Company had was with the corporation only and not with its stockholders or officers. The officers who conducted the business of the selling company were not parties to the contract. It is a familiar rule that an agent, who having lawful authority makes a contract with another for a known principal, does not bind himself but his principal only.

Story on Agency, Section 261.
Mechem on Agency, Section 555.
Whitney v. *Wyman*, 101 U. S., 392.

And the officers of a private corporation in respect to their liability on contracts entered into by them in behalf of the corporation stand upon the same footing as agents of private individuals.

21 Am. & Eng. Encl. of Law, 879.

Whitney v. *Wyman, supra.*

If the purchaser desired to make the officers and agents of the selling corporation subject to the stipulations of the company in the contract of sale, it should have required their personal agreement to that effect.

The cases cited by counsel for the complainant to support their contention that the court may look through the form of corporate organization and fasten upon the stockholders a liability for the acts of the corporation, do not support such a doctrine, as applicable to contract relations. These are *State* v. *Standard Oil Company,* 49 Ohio St., 137; *McKinley* v. *Wheeler,* 130 U. S., 630, and *Anthony* v. *American Glucose Co.,* 140 N. Y., 407. They were all cases where for special purposes and in special circumstances the court held that it was competent and proper to regard the rights and duties of stockholders in corporations. None of them impugns the general rule above stated that in matters of contract, the officers and agents of a corporation are not bound personally by stipulations made by them in behalf of their principal. This rule is not affected by the circumstance that they are indirectly interested as stockholders in the contracts of their corporation. If it were so, it would break down all distinction between the corporate entity and its component parts. Counsel for the appellee have

printed in their brief a recent decision, not yet published, of the Circuit Court of Appeals for the Seventh Circuit, in a case entitled *Hall's Safe & Lock Company and James W. Donnell* v. *Herring-Hall-Marvin Safe Co.* The suit was brought to restrain the defendant from using in its business the corporate name of the complainant as descriptive of its products. The defendant filed a cross-bill to restrain the complainant in the original bill from using the name of the Hall's Safe & Lock Company in their business of making and selling safes, and from selling such safes as "Hall's Safes." It appears from the opinion that Donnell had organized an Illinois corporation, the co-defendant, with the name of the old Hall's Safe & Lock Company, having no member of the name of Hall, and was carrying on the safe business under that style at Chicago. The court holds, what we should suppose quite clear, that this assumption of the name of "Hall's Safe & Lock Company" was a fraudulent device to appropriate the good will of the old company to which the Herring-Hall-Marvin Safe Company had succeeded. It is also held that the defendant in the cross-bill should be restrained from selling safes which were not of the manufacture of the Herring-Hall-Marvin Company, as "Hall's Safes." It was claimed that the defendant in the cross-bill was selling under that name safes made by the Hall's Safe Company, the defendant here. It was only in this incidental way that the rights of the Halls were considered, and of course they could not be adjudged in that suit.

We do not think there is any substantial difference between the conclusion of that court upon the

propriety of the use of the designation "Hall's Safes" and our own. We think it quite likely that court would have accepted the qualification that the use of such a designation in the business of the Halls would not be unlawful provided it was accompanied by explanatory matter showing that the product was their own and not that of the old company or its successors in business.

It is true that the learned judge who delivered the opinion said *arguendo,* that the court might look behind the corporation and find whether there were equities between the Herring-Hall-Marvin Company and the members of the Hall's Safe & Lock Company which would attach to the Hall's Safe Company, of which they are now members, and concluding there were such equities, proceeded to deduce the consequences. Without repeating what we have said upon this subject, we are constrained to think that the defendants, Hall, were not bound individually in law or in equity by the contract of their corporation.

The determination of the case must depend upon the application of other principles than such as would obtain if there were contractual relations between the parties in reference to the subject-matter of the suit. When the Herring-Hall-Marvin Company purchased the Hall Safe & Lock Company's plant and business, it acquired the good will of the latter company, and this included the right to use the means of communicating to the public information that it had succeeded to the business and good will of its vendor and among these rights was that of using the trade names which had been employed

in the business and by which the products thereof had been identified and known. And although the receiver's conveyance to the complainant did not in terms convey the right to use the old trade names, yet as it professed to convey all the assets of the Herring-Hall-Marvin Company, including the good will, we think it should be held that the purchaser acquired the right to designate its products by the same means as its predecessor in title had done. These rights it was entitled to enjoy exclusively. They were its property. Neither these defendants or any other person could lawfully invade them. And we put the statement in this form to signify that in our opinion the defendants were precluded equally with, and not otherwise than, all other persons, because it seems to us that if there are no contractual relations between the parties, it is indifferent that the rights of the complainant are derived from the Hall Safe & Lock Company.

It would not be difficult to define in comparatively set terms the limits within which the parties to this controversy should be confined, were it not for the fact that these individual defendants bear the name which has long been associated with the complainant's products. Joseph L. Hall left five sons, of whom the defendants Hall were the eldest, and they were all bred to the father's business and have followed it from their youth. They undoubtedly have the right to pursue the occupation of manufacturing and selling safes and they have the right to use their own family name in the business and adopt all proper means of making it known to the public that the safes they offer are made by them; and they

have the right to build up a business with a good will of its own. And if they choose to organize a corporation for that purpose, they have the right to use their family name in its title. But in doing all these things, neither these individual parties nor the corporation has the right to endeavor to lead the public into the belief that the safes they make are the product of the Hall Safe & Lock Company's successors in business. If, notwithstanding, the defendants conduct their business within these limits, it should happen that from the similarity of names, and the kind of business, intending purchasers might sometimes fall into the mistake that the defendants were the successors of the Hall Safe & Lock Company, and were making the kind and quality of safes that were made by that company, the defendants would not be responsible therefor. If in the choice of a corporate name, one should be chosen which would be likely to catch the complainant's business, it would be necessary to accompany its use in the business of the company by explanatory statements which would prevent any misunderstanding; for such a choice without explanation would be *prima facie* evidence of unfair dealing.

The cases upon this subject have come to be very numerous, and it is unnecessary to canvass them. This has been done so recently in several decisions of the Supreme Court that we shall content ourselves with the statement of the controlling principles which we conceive to be now established referring for authority to,

Howe Scale Co. v. *Wyckoff, Seamans, etc.*, 198 U. S., 118.

Singer Mfg. Co. v. *June Mfg. Co.*, 163 U. S., 169.

Brown Chemical Co. v. *Meyer*, 139 U. S., 540.

Turton and Sons v. *Turton and Sons*, L. R., 42 Ch. Div., 128.

Reddaway v. *Benham*, L. R., Ap. Cas. (1896), 199.

The subject was also elaborately discussed, and the authorities cited, in the opinion of this court in *Royal Baking Powder Co.* v. *Royal*, 122 Fed., 337; 58 C. C. A., 499, delivered by Judge Lurton.

Recurring to the facts of the present case the name adopted for the corporation was "Hall's Safe Company," a name so dangerously near to that of the "Hall's Safe & Lock Company" as to make it apparently necessary, to avoid mistake, that explanation should be made that it was not the same company or its successor in business. The testimony shows clearly enough that this had not been done; and although for a short time before the filing of the petition the defendant's practices had been mended in this regard, there was sufficient ground to apprehend the repetition of unauthorized pretensions by defendants to justify the complainant in invoking the power of the court to prevent them. Inasmuch as the individuals who are made defendants are not engaged in a business or proposing to engage in a business of their own prejudicial to the complainant, it would seem that the relief acquired should be the restraining of the corporation and its officers and agents from committing the unlawful acts complained of. It is not alleged in the bill that these de-

fendants are personally committing or threatening to commit any injurious acts. They are apparently made parties because of the fact that they were large stockholders in the Hall Safe & Lock Company and had assented to the sale of its properties, and had been instrumental in the organization of the new company. But we do not think the latter fact alone subjected them to any liability, and if as we have held, they were not personally bound by the stipulations of the company, we perceive no sufficient ground for awarding an injunction against them.

This has often been held in suits brought for the infringement of patents, and the rule seems equally applicable to cases of the character before us.

Western Union Telg. Co. v. *Home Telg. Co.*, 85 Fed., 649.

Bowers v. *Atlantic, G. & P. Co.*, 104 Fed., 887.

Loomis-Manning Filter Co. v. *Manhattan Filter Co.*, 117 Fed. Rep., 325.

Greene v. *Buckley*, 120 Fed., 955.

But we think the facts justified an injunction against the Hall Safe Company, though not in the terms stated in the decree.

With respect to the defendants Hall, we think the decree should be reversed with directions to dismiss the bill.

With respect to the defendant Hall's Safe Company the injunction should be modified. In lieu of the injunction ordered by the court below the following will be substituted:

The defendant the Hall's Safe Company, its servants, agents, officers and employes are perpetually

enjoined from carrying on the safe or vault business in the name of the *Hall's Safe Company* or any other name having similarity to the name Hall's Safe and Lock Company, without also giving information to the public that it is not the business formerly carried on by the Hall's Safe and Lock Company; and from making, advertising or otherwise designating its safes and vaults as the products of the Hall's Safe and Lock Company or its successors in business, or pretending that it is carrying on the business started by Joseph Hall and continued by the Hall's Safe and Lock Company; and from interfering in any manner with the exclusive right of the complainant to possess and enjoy the good will acquired by the Hall's Safe and Lock Company and from using the trade name of said last named company without at the same time so qualifying such trade name as to show that the trade name used is not the one formerly used to designate the products of the Hall's Safe and Lock Company.

In respect to the matter of the cross-bill, we think there is no substantial ground for complaint. For the reasons stated in the preceding opinion we are not prepared to say that the complainant in the original bill has exceeded its rights in endeavoring to maintain the benefits of its purchase from the Hall Safe & Lock Company; and we concur with the court below in holding that the cross-bill should be dismissed.

The costs of this appeal will be borne by the appellant, Hall's Safe Company, and the appellee, to be equally divided.

DONNELL *v.* HERRING-HALL-MARVIN SAFE COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 106. Argued January 14, 15, 1908.—Decided February 3, 1908.

A stockholder, even though also an officer, of a corporation bearing his family name does not necessarily lose his right to carry on the business of manufacturing the same commodity under his own name because that corporation sold its good will, trade name, etc., and as a stockholder and officer he participated in the sale. He is not entitled, however, to use, and may be enjoined by the purchaser from using, any name, mark or advertisement indicating that he is the successor of the original corporation or that his goods are the product of that corporation or of its successor, nor can he interfere in any manner with the good will so purchased.

THE facts are stated in the opinion.

Mr. George P. Merrick and *Mr. S. S. Gregory* for petitioner:

A family surname is incapable of exclusive appropriation by anyone as against others of the same name, who are using it legitimately in their own business.

In the absence of contract, fraud or estoppel any man may use his own name in all legitimate ways and as the whole or part of a corporate name.

One corporation is not entitled to restrain another from using in its corporate title the name to which others have a common right.

The essence of the wrong in unfair competition, consists in the sale of the goods of one manufacturer or vendor, for those of another. And if competition is so conducted as not to mislead the public nor palm off the goods of one as those of another, no wrong exists.

The right of the individual to use his own name, reputation

and experience in that business or occupation for which he is best fitted, is important to the public as well as to the individual, and to deprive him of that right is in restraint of trade and against public policy.

The stockholders of a corporation which has sold its property, business and good will and has been dissolved, may, in the absence of individual contracts not to engage in competition, or after the expiration of such contracts by limitation, engage in competition to the same extent as anyone else. *Howe Scale Co.* v. *Wyckoff et al.*, 198 U. S. 118; *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540; *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169; *Elgin National Watch Co.* v. *Illinois Watch Co.*, 179 U. S. 665; *Goodyear India Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, 128 U. S. 598; *Canal Co.* v. *Clark*, 13 Wall. 311; *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460; *Lawrence Mfg. Co.* v. *Tennessee Mfg. Co.*, 138 U. S. 537; *McLean* v. *Fleming*, 96 U. S. 645; *Coats* v. *Merrick Thread Co.*, 149 U. S. 562; *Oregon Steam Navigation Co.* v. *Winsor*, 20 Wall. 64.

Mr. Charles H. Aldrich and *Mr. Lawrence Maxwell, Jr.*, with whom *Mr. Henry S. McAuley* was on the brief, for respondents:

The corporation is a distinct entity separate from its stockholders. But the theory of corporate entity is not allowed to protect fraudulent conduct, hide the truth or defeat the ends of public or private justice. *Northern Securities Co.* v. *United States*, 193 U. S. 197; *Anthony* v. *American Glucose Co.*, 146 N. Y. 407; *State* v. *Standard Oil Co.*, 49 Ohio St. 137, 177; *McKinley* v. *Wheeler*, 130 U. S. 630, 636; *Myers* v. *Kalamazoo Buggy Co.*, 54 Michigan, 215; 1 Purdy's Beach on Corporations, 6.

Stockholders are bound by those acts of their corporation which can only be taken with their assent, and to which they give assent by affirmative vote or acquiescence. Cook on Corporations, § 670, and cases cited; *Holmes, Booth & Hayden* v. *Holmes, Booth & Atwood Co.*, 37 Connecticut, 278, 294;

Richmond Nervine Co. v. *Richmond*, 159 U. S. 293; *Le Page Company* v. *Russia Cement Co.*, 51 Fed. Rep. 941; *Cement Co.* v. *Le Page*, 147 Massachusetts, 206; *Penberthy Injector Co.* v. *Lee* (Mich.), 78 N. W. Rep. 1074.

The name "Hall" having been so long identified with the safe business as to acquire a secondary meaning, the sale of that business as a going concern, including the trade rights and good will, passed to the purchaser the exclusive right to use the name in that business as against all parties participating in the sale. *Le Page Co.* v. *Russia Cement Co.*, 51 Fed. Rep. 941; *C. S. Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y. 462; *Russia Cement Co.* v. *Le Page*, 147 Massachusetts, 206; *Menedez* v. *Holt*, 128 U. S. 514; *Hoxey* v. *Chaney*, 143 Massachusetts, 592; *Brown Chemical Co.* v. *Meyer*, 139 U. S. 548; *Richmond Co.* v. *Richmond*, 159 U. S. 293; Hopkins, Unfair Trade, 109, 110; *Dodge Stationery Co.* v. *Dodge*, 78 Pac. Rep. 879; *Myers* v. *Kalamazoo Buggy Co.*, 54 Michigan, 215.

The Hall's Safe Company, composed of the Halls who sold the original Hall's Safe and Lock Company to the respondent's predecessor, should be enjoined from the use of the word Hall in the safe business because: they have been paid for the name; they are estopped to assert a right to it; their use of the name Hall constitutes a fraud upon respondent. *Howe Scale Company* v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118; *Peck Bros. & Co.* v. *Peck Bros. Co.*, 113 Fed. Rep. 291; *Chickering et al.* v. *Chickering & Sons*, 120 Fed. Rep. 69; *Royal Baking Powder Co.* v. *Royal*, 122 Fed. Rep. 337; *Singer Manufacturing Co.* v. *June Manufacturing Co.*, 163 U. S. 169; *Singer Manufacturing Co.* v. *Brent*, 163 U. S. 205; *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540; *The Le Page Company* v. *Russia Cement Co.*, 51 Fed. Rep. 941; *Russia Cement Co.* v. *Le Page*, 147 Massachusetts, 206; *Hoxie* v. *Chaney*, 143 Massachusetts, 592; *McLean* v. *Fleming*, 96 U. S. 245; *Frazer* v. *Frazer Lubricator Co.*, 121 Illinois, 147; *Charles S. Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y. 462; *Levy* v. *Walker*, L. R. 10 Ch. D. 436; *Garrett*

v. *T. H. Garrett & Co.*, 78 Fed. Rep. 472; *Meyers* v. *Kalamazoo Buggy Co.*, 54 Michigan, 215.

Even if the Halls were at liberty to use their name in the safe business, the decree of the court below should be affirmed because of petitioner's fraudulent conduct, which has rendered any qualified use of the name by him an injury to the respondent.

MR. JUSTICE HOLMES delivered the opinion of the court.

This suit was brought in the Superior Court of Cook County, Illinois, by the Hall Safe and Lock Company against the Herring-Hall-Marvin Safe Company, and was removed by the latter to the United States Circuit Court. The bill sought to enjoin the defendant from representing itself to be the successor of the Hall Safe and Lock Company and otherwise, as need not be stated in detail. The defendant answered, denying the plaintiff's rights and setting up its own. At the same time it filed a cross-bill to which it made the petitioner Donnell, the president of the plaintiff company, a party, and by which it sought to enjoin the plaintiff and Donnell from carrying on the safe business under any name of which the word Hall is a part, or marking or advertising their safes with any such name, etc., unless made by the defendant or its named predecessors in business. The bill was dismissed by the Circuit Court, no appeal was taken, and it is not in question here. On the cross-bill an injunction was issued as prayed and an account of profits ordered. This decree was affirmed by the Circuit Court of Appeals. 143 Fed. Rep. 231; *S. C.*, 74 C. C. A. 361. Subsequently an injunction was granted by the Circuit Court of Appeals for the Sixth Circuit, but in much more limited form, after a consideration of the present case. 146 Fed. Rep. 37; *S. C.*, 76 C. C. A. 495. Later still a certiorari was issued by this court.

The facts are as follows: About sixty years ago Joseph L. Hall started a business of constructing safes, and in time at-

tached a reputation to his name. In 1867 he and his partners organized an Ohio corporation by the name of Hall's Safe and Lock Company, which went on with the business. (This was not the plaintiff, which is an Illinois corporation of much later date.) Hall was the president, a part or the whole of the time, until he died in 1889. He owned the greater part of the stock and his children the rest. In 1892 the Ohio company sold all its property, including trade-marks, trade rights and good will, and its business as a going concern, to parties who conveyed on the same day to the Herring-Hall-Marvin Company. Subsequently this company's property was sold to the Herring-Hall-Marvin Safe Company, the party to this suit. In its conveyance the Ohio Company agreed to go out of business and get wound up, which it did with the assent, it may be assumed, of all the stockholders. The stock belonged to the Hall family, and connections, and they, of course, ultimately received the consideration of the sale. A part consisted of stock in the new company, which was distributed to them at once, and a part was money paid to the selling company about to be dissolved. By election and under a contract made on the day of the sale Edward C. Hall, a son of the founder, became president of the purchasing corporation, the contract reciting that it was made as part of the inducement to the purchase, and he agreeing in it to hold the office until May 2, 1897, to devote all his time to the interests of the corporation, and, so long as it might desire to retain his services as stipulated, not to engage in any competing business east of the Mississippi River. Another son became treasurer under a nearly similar contract, and a son-in-law secretary.

Both sons resigned and left the service of the corporation August 1, 1896, and both were released, in writing, from their obligations under their contract. The next month the sons organized an Ohio corporation, under the name of Hall's Safe Company, which is party to the litigation in the Sixth Circuit, but is not a party here. The petitioner Donnell had been a selling agent of the original company, and afterwards of the

company that bought it out, having a place in Chicago, with a large sign, "Hall's Safes," on the front. In 1898 he, with others, organized the plaintiff, Hall Safe and Lock Company, the name differing from that of the original corporation only by not using the possessive case. This company does business in the petitioner's old place, with the old sign, and sells the safes of the present Ohio corporation as Hall's safes. It has accepted a decree forbidding it to go on under the above name. The question before us is upon the scope of the injunction finally issued, as we have stated, upon the cross-bill. That the petitioner contends is too broad, while the Herring-Hall-Marvin Safe Company contends that as against the Hall family and anyone selling their safes or standing in their shoes it has the sole right to the very valuable name Hall upon or for the sale of safes.

It no longer is disputed that the Herring-Hall-Marvin Safe Company is the successor of the original Hall's Safe and Lock Company, or that it has the right to use the word Hall. But it is denied that it has the exclusive right. The name does not designate a specific kind of safe, and yet may be assumed to have commercial value as an advertisement even when divorced from the notion of succession in business,—a sort of general good will, owing to its long association with superior work. So far as it may be used to convey the fact of succession it belongs, of course, to the Herring-Hall-Marvin Safe Company, and the narrower decree, made in the Sixth Circuit, was intended to prevent the present Ohio company from using any name or mark indicating that it is the successor of the original company, or that its goods are the product of that company or its successor, or interfering with the good will bought from it. But, as we have said, we presume that the word may have value, even when that idea is excluded, and when there is no interference with the good will or the trade name sold.

The good will sold was that of Hall's Safe and Lock Company. There is nothing to show that while that company was

going the sons of Joseph L. Hall could not have set up in business as safe makers under their own name and could not have called their safes by their own name, subject only to the duty not to mislead the public into supposing when it bought from them that it was buying their father's safes. Therefore it could not be contended that merely by a sale the father's company could confer greater rights than it had. But it was said that if a partnership had sold out by a conveyance in like terms the members would have given up the right to use their own names if they appeared in the firm name, that in this case the Halls received the consideration for the good will they had attached to their name, that they ratified the sale and necessarily assented to it, since otherwise the corporation could not have sold its property or have carried out its agreement to dissolve, and that under such circumstances a court ought to look through the corporation to the men behind it.

Philosophy may have gained by the attempts in recent years to look through the fiction to the fact and to generalize corporations, partnerships and other groups into a single conception. But to generalize is to omit, and in this instance to omit one characteristic of the complete corporation, as called into being under modern statutes, that is most important in business and law. A leading purpose of such statutes and of those who act under them is to interpose a nonconductor, through which in matters of contract it is impossible to see the men behind. However it might be with a partnership, *Russia Cement Co.* v. *Le Page*, 147 Massachusetts, 206, 211, when this corporation sold its rights everybody had notice and knew in fact that it was not selling the rights personal to its members, even if, as always, they really received the consideration, or, as usual, they all assented to its act. That it contracted for such assent, if it did, by its undertaking to dissolve, does not make the contract theirs. But the case does not stop there. The purchasing company had the possibility of competition from the Halls before its mind and gave

the measure of its expectations and demands by the personal contracts that it required. Those contracts were limited in time and scope and have been discharged.

A further argument was based on the confusion produced by the petitioner through his use of signs and advertisements calculated to make the public think that his concern was the successor of the first corporation and otherwise to mislead. This confusion must be stopped, so far as it has not been by the decree in force, and it will be. But it is no sufficient reason for taking from the Halls the right to continue the business to which they were bred and to use their own name in doing so. An injunction against using any name, mark or advertisement indicating that the plaintiff is the successor of the original company, or that its goods are the product of that company or its successors, or interfering with the good will bought from it, will protect the right of the Herring-Hall-Marvin Safe Company, and is all that it is entitled to demand. See *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118; *Singer Manufacturing Co.* v. *June Manufacturing Co.*, 163 U. S. 169.

Decree reversed.